

Exemption 6

March 23, 2016

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MAR 28 2016  
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To Who it May Concern:

In accordance with 25 CFR 83.22(b)(1)(iv) and the Department's Opportunity for Comment notice of November 28, 2015, I am submitting, as an individual, comments on the **Fernandeño** Tataviam Band of Mission Indians' documented petition for Federal acknowledgment. A hard copy of these comments is enclosed, but I will also submit an electronic copy to the Director of the Office of Federal Acknowledgment (OFA). Please contact me if you have questions or concerns.

Regards,



Michael L. Lawson

(b) (6)

Annandale, Virginia

#03-54

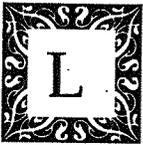
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FROM:



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Annandale, VA 22003

DO, S-IA/OFA  
Washington, DC

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Washington, DC 20240



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**COMMENTS ON THE DOCUMENTED  
PETITION FOR FEDERAL  
ACKNOWLEDGMENT PRESENTED BY  
THE FERNANDEÑO TATAVIUM BAND  
OF MISSION INDIANS**

Submitted to the  
U.S. Department of the Interior  
Office of Federal Acknowledgment

by

Michael L. Lawson

March 23, 2016

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## SUMMARY

This document consists of my extended comments regarding the evidence the Fernandño Tataviam Band of Mission Indians has presented to the U.S. Department of the Interior (DOI) for Federal acknowledgment as a tribe in accordance with Part 83 of Title 25 of the *Code of Federal Regulations* (25 CFR 83). My comments address and evaluate the evidence presented by the petitioner in the narrative of its 2009 documented petition and in the three supplemental reports it submitted in 2015. They evaluate this evidence under the revised regulations published by the Assistant Secretary of the Interior for Indian Affairs (AS-IA) as a Final Rule in the *Federal Register* on July 1, 2015. In accordance with § 83.7(b) of the revised regulations, the Fernandño petitioner has opted to proceed under the 2015 regulations. Despite this decision, the petitioner submitted supplemental reports in September 2015 that address criteria 83.7 (a), (b), and (c), the mandatory criteria for entity identification, community, and political influence or authority under the 1994 regulations. While the information in the supplemental reports provides further historical background and context for the petition, nearly all of it addresses the 19<sup>th</sup> century, which is not a period for which the DOI's Office of Federal Acknowledgment (OFA) will evaluate the Fernandño petition. The revised 2015 regulations provide that the evaluation period for criteria 83.11(a), (b), and (c) begins in 1900.

My comments conclude that the Fernandño petitioner does not appear to have sufficient evidence at present to meet three of the seven mandatory criteria for Federal acknowledgment under the 2015 regulations. For reasons explained herein, I could not determine at present whether the petitioner meets the very critical criterion 83.11(e), descent from an historical tribe. Failure to meet this criterion would result in the OFA issuing an expedited proposed finding to deny Federal acknowledgment.

In my opinion, the petitioner does not currently have adequate documentation to meet criteria 83.11(a), identification as an American Indian entity since 1900, 83.11(b), social relations within a distinct community since 1900, and 83.11(c), political influence or authority within a distinct entity since 1900. The petitioner does appear to have sufficient evidence to meet criteria 83.11(d), having a governing document that defines its membership criteria, 83.11(f), not being comprised principally of members of federally recognized tribes, and 83.11(g), never having had a Federal relationship terminated by Congressional legislation.

The Fernandefio petitioner claims that it meets § 83.12, unambiguous previous Federal acknowledgment, which substantially lowers the burden of proof for meeting criteria 83.11(a), external identification of an American Indian entity, 83.11(b), community, and 83.11(b), political influence or authority, for those petitioners that can evince having a previous government-to-government relationship with the United States. The petitioner maintains that it was previously acknowledged between 1885 and 1904. By comparing this claim against the precedents of the DOI's previous findings regarding unambiguous previous acknowledgment, my comments demonstrate how the Fernandefio evidence does not meet the standard that would allow a reduction in the burden of proof for criteria 83.11(a-c).

The Fernandefio petitioner has failed to present sufficient evidence to meet criterion 83.11(a), identification as an American Indian entity since 1900, for more than half of the years since 1900 (60 of the total of 116 years). This 60-year gap in evidence runs from 1910 to 1970. If the petitioner chooses to proceed in the acknowledgment process with its existing evidence, this lack of documentation alone would be fatal to its case. The 2015 revised regulations do not require that all of the evidence be from external sources, as did the 1994 regulations. Section 83.11(a)(7) provides that the identification of an entity can be "by the

petitioner itself," although this evidence must still be combined with one or more defined categories of external identification (such as by Federal authorities or State governments) in order to meet the criterion. The petitioner's 2015 supplemental report for criterion 83.7(a) presented some new evidence for external identification of a tribal entity, but it did not address the new category of evidence allowing documentation of internal identifications. In my view, this is an example of how the Fernandefio petitioner has handicapped its petition by deciding to proceed under the 2015 regulations on the basis of its existing evidence that focused on the mandatory criteria in the 1994 regulations. The petitioner would have been better off, in my opinion, if it chose to take the time to tailor its evidence to the mandatory criteria in the 2015 regulations, which provides for shortened evaluation periods and new categories of evidence that the petitioner should have been able to use to advantage. Now it is faced with the disadvantage of trying to fit the square peg of its documented petition and supplemental reports addressing the 1994 regulations in the round hole of the 2015 regulations.

As noted, the Fernandefio petitioner's present evidence does not appear to meet criterion 83.11(a) based on external sources for the period 1910 to 1970. In my view, the petitioner's existing evidence for criteria 83.11(b), community, and 83.11(c), political influence and authority, also does not provide sufficient internal documentation of the existence of a distinct Fernandefio tribal entity to fill this 60-year gap.

As is noted in detail in my comments, the petitioner's oral history evidence strongly suggests the absence of a functioning organic tribal entity whose members knew each other and their historical continuity. It fails to evince that they had significant social relations and any significant political relationship with recognized leaders until the latter decades of the 20<sup>th</sup> century. The statements of the informants give the impression that the people involved with the petitioner

prior to that time did not have a collective identity as Indians or as a tribal entity and were not particularly inclined to organize. They also suggest that their organizer, Rudy Ortega, Sr., was trying to develop an Indian descendancy or recruitment group rather than reorganizing a continuing tribal entity and that one of the incentives for organizing was the pursuit of claims. Because it appears from the evidence presented that the Indian descendants of the San Fernando Mission represented by this petitioner did not reform as a tribal entity in the early 20<sup>th</sup> century, the Fernandefio's documentation is insufficient to meet criterion 83.11(a) under the 2015 regulations. These revised regulations provide that a petitioner's evidence will be evaluated in two defined phases: (Phase I) criteria 83.11(d), (e), (f) and (g) and (Phase II) criteria 83.11(a), (b), and (c). If the Fernandefio petitioner is found to meet criteria 83.11(d-g) in a Phase I review but fails to submit adequate evidence for criterion 83.11(a) in Phase II, the OFA would publish a negative proposed finding based on this failure alone (see § 83.26(b)(4)).

Criteria 83.11(b) and (c) of the 2015 regulations define categories of evidence and of High Evidence for meeting each criterion. Documenting any of the High Evidence categories permits the petitioner to meet the criteria for the time span that documentation covers solely based on that evidence. Otherwise, the regulations require meeting a combination of two or more of the defined categories of evidence for each criterion.

The Fernandefio petitioner only has acceptable evidence for criterion 83.11(b), community, for the period since about 1999. The core problem is that while the petitioner claims three primary family lineages (Ortega, Ortiz, and Garcia) it fails to adequately demonstrate the social interaction of all three lineages before this time.

For the period from 1900 through 1951, the Fernandefio petitioner's present evidence may, with two important caveats, meet two categories of evidence for community during certain years of this time span. The categories are (1) having "evidence of strong patterns of discrimination or other social distinctions by non-members" (§ 83.11(b)(1)(v)) and (2) "having a named, collective Indian identity continuously over a period of more than 50 years" (§ 83.11(b)(1)(viii)). The limits of the evidence are that: (1) specific information about discrimination and social distinctions only covers the period since the 1920s; and (2) the petitioner's ancestors represented only a very small number of the Indians that shared the collective identity of being San Fernando Mission Indians or Fernandefios. Evidence in the petition suggests that at some point members may have lost their collective identity (not knowing they were Indian and/or not knowing their tribal affiliation). The Acknowledgment regulations provide that a petitioner must meet a combination of categories of evidence for criterion 83.11(b). However, the combination of somewhat minimal positive evidence for § 83.11(b)(1)(v) and (viii) for some years is not sufficient to carry the case for the entire period 1900 through 1951 in the absence of strong evidence of significant social relations and informal social interaction.

For the period from 1952 through 2015, Fernandefio petitioner meets § 83.11(b)(1)(viii) for this period, having demonstrated a collective Indian identity for more than 50 years. It might meet 83.11(b)(1)(vii), distinct cultural patterns, if it made an argument that the autonomous family lineages constituted a distinct cultural pattern (which it has not articulated in the present petition). It also might meet § 83.11(b)(1)(ii), significant social relationships, and § 83.11(b)(1)(iii), informal social interaction, since the mid-1950s if the petition presented more specific evidence regarding the relationships and interaction both between the core group families in and near San Fernando and between those families and

the outlying families, including the Garcia lineage group. At present, the petitioner's specific evidence for community only has acceptable documentation for meeting these categories of evidence since about 1999.

Although the petitioner's existing evidence for criterion 83.11(b) during the period 1952 through 2015 fails to document the social interaction of members of the Garcia lineage prior to 1999, its evidence for political influence and authority (criterion 83.11(c)) evinces the political participation of at least some members of the Garcia family as early as the 1950s. Conversely, the political participation of Ortiz family members during these years is not well documented in the petition, although there is better evidence of their social interaction. While it can reasonably be assumed that political participation also involved social interaction, neither is adequately established for all three family lineages in the petitioner's existing evidence for criteria 83.11(b) and (c).

As I have noted throughout these detailed comments on the Fernandño petitioner's evidence for criterion 83.11(b), the petitioner might meet § 83.11(b)(1)(vii), distinct cultural patterns, and perhaps even § 83.11(b)(2)(iii), High evidence for distinct cultural patterns, if it made an argument that the autonomous family lineage model it projects constitutes a distinct cultural pattern (which is not included in the present petition). To support this argument, more specific examples of how the separate family lineages made social and political decisions would need to be provided.

In sum, the Fernandño petitioner's present evidence appears to meet criterion 83.11(b), community, only for the years 1999 through 2015. It fails to adequately demonstrate the existence of a distinct tribal community in which there were significant social relationships involving all three claimed primary family lineages for the period from 1900 through 1998. Therefore, the petitioner's existing documentation fails overall to meet criterion 83.11(b).

The categories for demonstrating evidence for community in § 83.11 of the 2015 regulations are essentially the same as those in the 1994 regulations. What is substantially different is that the revised regulations greatly truncate the period of evaluation for both criteria (b), community, and (c), political influence or authority, moving the start date forward 111 years from 1789 to 1900. In addition, the Final Rule added new categories of evidence for criteria (b) and (c) and modified language in some of the previous categories for these criteria. However, these comments find that these changes are only slightly beneficial to the Fernandefio petitioner.

As I have noted, the Fernandefio petitioner's present evidence does not appear to meet the community criterion from 1900 until about 1999. Evidence is particularly lacking for the period from 1900 until the mid-1950s. The evidence presented for this period strongly suggests that the petitioner was not a functioning organic tribal entity whose members knew each other and their historical continuity. This collective identity was not shown until Rudy Ortega, Sr., began efforts to organize Fernandefio descendants into a social club in the mid-1950s. The petitioner's evidence on residential proximity from the 1950s through the 1990s indicates that there was a core group of members in or around San Fernando that lived in close enough proximity to maintain social relationships and informal social interaction, and that there was increasingly more entity activities that may have drawn outlying members into social relationships. However, the petition does not present good evidence regarding the individual families involved and their actual participation level. It fails until the late 1990s to present specific evidence that significant social relations and/or informal social interactions also encompassed one of its three primary lineage families, the Garcia's.

Although the membership is more dispersed in the 2000s there are more documented tribal activities that demonstrate significant social relations between all of the three primary family lineages claimed by the petitioner and their sub-lineages. If the petitioner can produce more evidence of family interaction that also includes the Garcia line, it might be able to meet the categories of evidence in § 83.11(b)(1)(ii) and (iii), social relationships and informal social interactions respectively, from the mid-1950s on. With its present specific evidence for community, however, it only approaches meeting these categories since 1999.

The Fernandefio petitioner appears to meet the category of evidence in § 83.11(b)(1)(v), strong patterns of discrimination or other social distinctions by non-members, from the 1920s through 1951. It likewise meets the category of evidence in § 83.11(b)(1)(viii), persistence of a named, collective Indian identity continuously over a period of more than 50 years, but only since the 1950s when it adopted the tribal name of the San Fernando Mission Indians. The petitioner might meet § 83.11(b)(1)(vii), distinct cultural patterns, and perhaps even § 83.11(b)(2)(iii), High Evidence for distinct cultural patterns, if it made an argument that the autonomous family lineages are a unique kinship organization that constitutes a distinct cultural pattern (which it does not do in the present petition). To support this argument the petitioner would need to provide more specific examples of how the separate family lineages made social and political decisions.

The Fernandefio petitioner submitted its documented petition under the 1994 regulations, which required meeting criteria (b) and (c) since 1789. The evidence it presented would likely have met criterion (c), political influence or authority, from 1789 to 1846 based on § 83.7(b)(2) and § 83.7(c)(3) of the 1994 regulations, which would have allowed the petitioner's High Evidence for § 83.7(b)(2)(i), based on residential proximity in the distinct community of the San Fernando Mission, to also meet criterion 83.7(c) for this same period.

Thereafter, however, the petitioner has significantly less evidence for political influence or authority than it does for community until the latter decades of the 20<sup>th</sup> century. The biggest problem is that the petitioner claims three primary family lineages but fails to adequately demonstrate the political interaction of all three of these family lines until the 1950s at best. For the period through 1904 and starting back at 1847, the Fernandño petitioner does not meet even the minimal standard for any of the five categories of evidence for criterion 83.7(c) or the four categories of High Evidence in the 1994 regulations.

The 2015 regulations have, for the most part, kept intact the intent and standards for criterion (c), political influence or authority, from the 1994 regulations, as well as much of the language. The major change is that the revised regulations shorten the evaluation period for political influence or authority, moving the starting date from 1789 to 1900. The Final Rule also adds three new categories of evidence for meeting the criterion and modifies the language for two other categories.

In evaluating the Fernandño evidence under the 2015 regulations for the period from 1905 through 1951, these comments conclude that the petitioner may only meet one of categories of evidence for political influence or authority and that is § 83.11(c)(1)(v); demonstrating "internal conflicts which show controversy over valued entity goals, properties, policies, processes, and decisions" for certain periods of time (1928-1933 and 1948 to 1951). The evidence does not permit it to meet that category of evidence for the whole period and petitioner meets no other categories of evidence during this time span that it could use to combine with this category. The existing petition has a paucity of documentation for any category of evidence for this period, and at least the early years of this half-century seem to be well beyond the range of what can be accurately captured by oral history interviews.

For the period 1952 through 2015, the evidence of the Fernandefio petitioner's existence as a tribal political entity does not seem to come together until the early 1970s. By that time, it had an elected leader in Rudy Ortega, Sr., a formal entity name as the San Fernando Mission Indians, issues around which it could mobilize members, including registration for the California Indian Judgment Fund, and at least nominal participation of all three primary lineages (Ortega, Ortiz, and Garcia). Since the 1970s, the petitioner has greatly expanded its activities and subject issues to include cultural and religious site monitoring, increased involvement in health, education, and charity programs, and greater sophistication of its governance with a constitution, an administrative office, voting districts, etc. Although the petition does a good job of describing the activities of the leadership since the 1970s, identifying elected members of the governing body and indicating how they voted on specific tribal issues could strengthen this evidence.

What is sorely missing in the petition are descriptions and documentation of member involvement in political processes, the kind of evidence that the defined categories for criterion 83.11(c) specifically request. In other words, evidence that many or a significant number of members were in fact mobilized by issues defined by the leadership, that they were well versed on the issues and discussed them, and were generally engaged in political processes with the leadership, including the resolution of any internal conflicts. Such evidence may very well exist, but the petitioner has failed to establish it because it has not attempted to either describe or quantify member knowledge of or participation in political processes.

Because its focus has been primarily on the political participation of the leadership rather than that of the membership, the petition has generally failed to evince the existence of an interactive political relationship. Apparently, the petitioner does not have adequate documentation of attendance at meetings,

issues discussed, and vote tallies. Much of the evidence presented is based on oral history interviews with leaders or those close to the leadership. The petitioner might have come closer to meeting the political influence or authority criterion if its oral history project had sampled a greater number of regular Band members and asked them questions that were more specifically relevant to the defined categories of evidence for the criterion. Such inquiries could have addressed their knowledge of the issues defined by the leadership and participation in formal meetings or informal discussions regarding those issues.

The petitioner fails to meet criterion 83.11(c), political influence or authority, from 1952 through 2015 because its documentation does not adequately meet any of the separate categories of evidence for this criterion, primarily because of its failure to evince member participation in political processes.

Although the Fernandño petitioner has better evidence of political influence or authority for the decades since 1970, it fails to meet criterion 83.11(c) for the overall period from 1952 through 2015 because its documentation does not adequately meet any of the eight separate categories of evidence for this criterion, primarily because of its failure to evince member participation in political processes. It may be able to at least partially meet the new category of evidence in (§ 83.11(c)(1)(viii) of the revised regulations, having a continuous line of leaders and a means of leadership selection or acquiescence by a significant number of members. The existing evidence claims a continuous line of leaders since 1900, although the evidence of leadership prior to 1951 is based primarily on the oral history statements of the Rudy Ortega, Sr., the petitioner's leader until 2008. The major problem the petitioner has in meeting this category with its existing evidence is that it has not clearly documented a leadership selection process prior to the early 1950s at best and perhaps later. While the petitioner might argue that while there may have been no formal selection process members at least acquiesced to the selection of the Ortegas, nonetheless it

would still be hard pressed with the existing evidence to show that a “significant” number of members acquiesced to their leadership because the current petition has not quantified member involvement.

Essentially every petitioner met criterion 83.7(d) of the 1994 regulations (which is similarly required in § 83.11(d) of the 2015 regulations) and that is to have a governing document or some other written document that defines its membership criteria. Criterion (d) is required primarily so that the DOI can adequately measure a petitioner’s membership to determine if the current members meet the membership criteria. The Fernandño petitioner claims that its membership criteria are established in Chapter 3, Article 6 of its constitution, which has not been made public. The petition narrative does not describe the membership criteria, it merely describes the procedures for considering membership applications. However, because the petitioner likely has adequate membership criteria in its governing document or could readily provide a written description of its membership criteria, it likely meets criterion 83.11(d).

Criterion 83.11(e) of the 2015 regulations requires proof that a petitioner’s current membership descends from an historical tribe or from two or more tribes that have joined together and acted politically as a single entity. This criterion requires a petitioner to provide a list of its current members, any and all previous membership lists, and ancestry charts and vital records that demonstrate how current members descend from ancestors who were members of an historical tribe. Under the 2015 regulations, “historical” is interpreted as meaning “before 1900.”

The Fernandño petitioner’s evidence for criterion 83.11(e) could not be adequately evaluated because neither its genealogical data and records nor membership lists are accessible. These records are, at least in part, protected from public disclosure under provisions of the Privacy Act and the Freedom of

Information Act. The petitioner claims that it had no comprehensive membership list prior to the one it submitted to the DOI. The OFA's Technical Assistance (TA) review of the initial petition questioned the Indian ancestry of those current members claiming descent from Antonio Maria Ortega, who the petition claims was a tribal captain from 1904 to 1941, and who is a progenitor of most of the defined leaders and members of the petitioning entity following that period. The petitioner submitted additional evidence regarding the ancestry of Antonio Marie Ortega in its 2009 documented petition. However, it cannot be determined, absent the full genealogical record, whether this new evidence will be sufficient to permit the petitioner to meet criterion 83.11(e).

If the present evidence does not meet criterion 83.11(e) the petitioner is subject to an expedited proposed finding declining Federal acknowledgment. Failure to document the Indian ancestry of Antonio Marie Ortega would, in and of itself regardless of meeting any other criteria, be fatal to the Fernandefio petitioner's case. Under § 83.26(a)(3) of the 2015 regulations, the OFA can issue a negative proposed finding if a petitioner does not meet criteria 83.11(e), (f), or (g) during a Phase I evaluation.

Criterion 83.11(f) of the 2015 regulations requires proof that a petitioner's membership is not composed principally of members of any federally acknowledged tribe. This criterion is required because the DOI seeks to prevent federally recognized tribal components or factions from being able to use the Federal acknowledgment process to break up acknowledged tribes. The Fernandefio petitioner has provided the OFA with a statement, signed by its governing body, indicating that a predominate portion of its membership is not enrolled in any federally recognized tribe. In addition, the petitioner represents that its governing document provides that applicants for membership must submit a sworn letter of relinquishment of membership in any other tribe. Therefore, the petitioner likely meets criterion 83.11(f).

Criterion 83.11(g) of the 2015 regulations requires proof that neither the petitioner nor its individual members have been the subjects of Congressional legislation that terminated a Federal relationship. This requirement is in place because the DOI does not have the authority to restore or acknowledge tribes or tribal members whose Federal relationship was legislatively terminated. Only Congress has that authority. The Fernandefio petitioner has provided the OFA with a statement, signed by its governing body, indicating that neither the band nor its individual members have been the subject of legislation terminating a Federal relationship. The only tribal entities in California whose Federal trust relationship was terminated by Congress were a number of recognized Rancherias, primarily in northern California. Most of those tribal entities have subsequently had their Federal relationship restored by Congress. Therefore, it is likely that the petitioner meets criterion 83.11(g).

The Fernandefio petitioner's documented petition was projected to be actively considered by the DOI in early 2014 under the 1994 regulations, but the petitioner requested time to decide if it wanted to proceed under those regulations or instead wait to be evaluated under the then proposed revised regulations, if and when they were published as a Final Rule. The revised regulations published in July 2015 are more beneficial to the petitioner given the fact that they permit a starting date of 1900 rather than 1789 for criteria 83.11(b) and (c). This means that the petitioner did not have to provide documentation for the period from 1847 through 1899, a more than half-century for which it appears to have insufficient evidence. Likewise, the revised regulations have new and modified categories of evidence for criteria 83.11 (b) and (c) that a petitioner might use to enhance its case. Perhaps for these reasons, the Fernandefio petitioner decided to be evaluated under the revised regulations. Although it was able to do so without submitting a new documented petition (see § 83.7(c) of the 2015 regulations), it would have been much more beneficial to

its chances of gaining Federal acknowledgment under the DOI's administrative process if it had made the effort to draft a new narrative and gather new evidence, including oral histories, targeted specifically to the revised time frames and categories of evidence in the Final Rule.

### **§ 83.12, Criterion for Unambiguous Previous Federal Acknowledgment**

This evaluation begins with this criterion for demonstrating previous acknowledgment because if the Fernandefio petitioner can meet criterion 83.12 it will substantially lower its burden of proof for meeting criteria 83.11(b), community, and 83.11(b), political influence or authority. The revised Federal acknowledgment regulations of 2015 simplify the wording of the previous acknowledgment criterion (83.8) but retain the same standards:

#### **§ 83.12, What are the criteria for previously federally acknowledged petitioners?**

**(a) The petitioner may prove it was previously acknowledged as a federally recognized Indian tribe, or as a portion that evolved out of a previously federally recognized tribe, by providing substantial evidence of unambiguous Federal acknowledgment, meaning that the United States Government recognized the petitioner as an Indian tribe eligible for the special programs and services provided by the United States to Indians because of their status as Indians with which the United States carried on a relationship at some prior date, including, but not limited to, evidence that the petitioner had:**

- (1) Treaty relations with the United States;**
- (2) Been denominated a tribe by act of Congress or Executive Order;  
or**
- (3) Been treated by the Federal Government as having collective rights in tribal lands or funds, or**
- (4) Land held for it or its collective ancestors by the United States.**

**(b) Once the petitioner establishes that it was previously acknowledged, it must demonstrate that it meets:**

**(1) At present, the Community Criterion; and**

**(2) Since the time of previous Federal acknowledgment or 1900, whichever is later, the Indian Entity Identification Criterion and Political Authority Criterion.**

The Fernandño documented petition of 2009 claims that it was previously acknowledged in "1892, and as late as 1904" (Disc File 2009.9 Nov.a.pdf, frame 29). It bases this claim on the efforts of Frank D. Lewis, a Special Assistant U.S. Attorney for Mission Indians, to try to recover lands for "a company of Indians living on the edge of the San Fernando grant" (Disc File 2009.9 Nov.a.pdf, fr. 29). Lewis wrote the Commissioner of Indian Affairs, requested the General Land Office to research the issue, and recommended that the Secretary of the Interior take necessary action to cancel the patent on land that previously belonged to these Indians (Disc File 2009.9 Nov.a.pdf, fr. 29-30). Apparently, however, no Federal action was taken as a result of these efforts. Nevertheless, the Fernandño petitioner maintains that Lewis acknowledged "a federal obligation to protect the Indian group that had been dispossessed" and that his actions therefore constituted "recognition of a tribe of Indians" (Disc File 2009.9 Nov.a.pdf, fr. 31).

In its 2015 supplement for criterion 83.7(a), the petitioner makes further arguments for Lewis's actions constituting previous Federal acknowledgment (pp. 19-25). However, the efforts of the Special Assistant U.S. Attorney on behalf of the San Fernando Mission Indians did not result in any affirmative action by the Federal government that acknowledged the existence of a government-to-government relationship between the United States and a Fernandño tribal entity, which is the standard for meeting §83.12. These actions and efforts merely documented that certain Federal officials were aware of the San Fernando Indians (see below).

The petitioner's 2015 supplement for criterion 83.7(a) also makes a lesser claim for previous acknowledgment based on the actions of U.S. Special Attorney Guilford Wiley Wells' 1885 representation of Rogerio Rocha in trying to prevent his land eviction (p. 24). However, Wells' was not representing a tribal entity *per se* and his actions did not result in the establishment of a government-to-government relationship with the San Fernando Indians. In fact, his efforts were unsuccessful in preventing eviction. In addition, the supplement submits as evidence the fact that Zachariah Montgomery petitioned President Grover Cleveland in 1896 on behalf of the San Fernando Indians and that action resulted in a special message by the President to Congress urging the extension of the period during which the Federal government could bring suit to recover land titles illegally voided. Again, this evidence does not rise to the standard of previous acknowledgment. Montgomery was not then a Federal official, no evidence is presented that President Cleveland's message specified the San Fernando Mission Indians, and no affirmative action resulted, such as the setting aside of Federal lands for those Indians, which would in fact have evinced unambiguous previous Federal acknowledgment.

The Fernandefio petitioner also maintains that previous Federal acknowledgment is evinced by the fact that Mission Indian Agent H. N. Rust provided aid in the 1890s to Rogeria Rocha and "other Indians under his charge" from Federal funds. According to the petitioner, agents Rust and Lewis, in taking their separate actions "dealt with the Fernandefios as a entity and identified it as a distinct political and social entity" (fr. 31).

The Fernandefio evidence clearly does not meet the standards or precedents for unambiguous previous Federal acknowledgment. The DOI has concluded in previous cases that determining that a petitioner was previously acknowledged

requires a more rigorous standard of evidence than that used for determining whether a entity meets the criteria 83.7(a)-(g) because previous recognition is meant to set a high preliminary threshold, which allows a reduced overall evidentiary burden on petitioners for subsequent periods" (see the Cowlitz Reconsidered Final Determination, 2001, p. 20 and the Chinook Reconsidered Final Determination, 2002, p. 30).

The threshold issue of determining previous acknowledgment is whether the Federal Government "took an action clearly premised on identification of [a petitioner] as a tribal entity that clearly indicated the recognition of a relationship between the United States and the ... petitioner" (see Shinnecock Proposed Finding, 2009, p. 17). In its 2009 Little Shell Tribe of Chippewa Indians of Montana Final Determination, the DOI stated that:

The Government has dealt with Indian groups on a variety of bases that do not rise to the level of a government-to-government relationship between a clearly identified tribal entity and the United States .... For example, the Federal Government has dealt with groups on the basis that they had standing to bring a claim before the Indian Claims Commission, or that un-recognized groups may petition for Federal acknowledgment....

Interpreting the definition of unambiguous previous acknowledgment to mean any form of relationship would defeat the purpose of section 83.8. The section's clear intent is to sort from the varied Federal interactions with Indian groups and individuals those showing unambiguously that a relationship with an Indian tribe as a political body existed (Little Shell Tribe of Chippewa Indians of Montana Final Determination, 2009, p. 31).

In specific regard to attempts to acquire lands for landless Indians evincing previous acknowledgment, the DOI stated further in the Little Shell Chippewa Final Determination that:

The petitioner also argued the Federal Government recognized its group had "collective rights in tribal lands," a form of evidence specified in the regulations (83.8(c)(3)), because the Indian Office attempted to obtain land for Montana's landless Indians and sometimes made reference to the interest those Indians might have in any lands possibly purchased. Section 83.8(c)(3)

of the regulations, however, refers to evidence of existing ownership of tribal lands, recognized by Federal actions. The Indian Office did not premise its efforts to acquire land for the landless Indians of Montana in the 1930s or 1940s on the previous recognition of a tribe, or any obligations to a group or groups under treaties, agreements, or other Federal actions. In this case, any interests in the lands were essentially prospective, since the Federal Government never acquired most of the proposed lands. Neither did it place title to those it did obtain in Federal trust in the name of the landless Indians or precursor group to the current petitioner, but instead made the land an addition to the present Rocky Boy's reservation with one organization. Therefore, the Federal Government did not recognize the landless Indians as having a collective legal interest in any purchased lands (Little Shell Tribe of Chippewa Indians of Montana Final Determination, 2009, p. 31).

The Shinnecock petitioner had much stronger evidence of Federal identifications and relations over a much longer period than does the Fernand o petitioner. Yet, the DOI denied the Shinnecock evidence for previous acknowledgment, although it granted Federal acknowledgment to the petitioner in 2010 based on its other strong evidence for meeting the seven mandatory criteria. In regard to   83.8, the DOI held that:

the Federal Government was *aware* of the existence of a Shinnecock entity but repeatedly chose not to establish a relationship with it. The Department held internal discussions about the Shinnecock, but no Departmental action established a relationship. Congress investigated the status of Indian affairs in the State of New York, but Congress never passed legislation establishing a relationship with the petitioner as an Indian tribe. On several occasions, the Federal Government explicitly rejected the opportunity to establish a relationship with the petitioner (Shinnecock Proposed Finding, 2009, p. 17).

In response to this Proposed Finding, the Shinnecock submitted further arguments and evidence for previous acknowledgment, but the DOI in its 2010 Final Determination reaffirmed its finding that:

evidence in the record does not show that the Federal Government established, by its actions, a relationship between the United States and the petitioner as an Indian tribe at any time. ... the Department was aware of the Shinnecock of Long Island and held internal

discussions as to whether the Department should establish a Federal relationship with them, but the Department took no action to do so (Shinnecock Final Determination, *Federal Register*, June 18, 2010, pp. 34760-61).

Based on these precedents, the efforts of Special Assistant U.S. Attorney Frank D. Lewis to recover lands for "a company of Indians living on the edge of the San Fernando grant" does not constitute previous acknowledgment of a tribal entity because the DOI took no action to cement an ongoing government-to-government relationship with that "company of Indians." Rather, this evidence merely documents that the DOI was *aware* in the early 1890s of certain landless Indians in the vicinity of the San Fernando grant. The evidence also is ambiguous regarding whether Lewis and agent Rust proposed to aid or did in fact provide aid to these Indians on the basis of their recognition of a tribal political entity, or rather on the basis of their awareness of needy individual Indians.

To gain greater perspective on the issue of previous Federal acknowledgment, it is perhaps helpful here to summarize the various kinds of evidence presented by the Shinnecock petitioner to meet § 83.8 that was rejected by the DOI:

1889: The Commissioner of Indian Affairs provided assistance to Shinnecock in pursuit of claims against a railroad.

1890: The Commissioner of Indian Affairs, in his annual report, identified Shinnecock as a tribal entity with a reserved land base.

1892: The Commissioner of Indian Affairs assisted in getting Shinnecock children into federally funded boarding schools.

1914: Special Indian agent John Reeves compiled a report on the status of the Shinnecock for the Commissioner of Indian Affairs.

1915: The Secretary of the Interior reported the status of Shinnecock to Congress.

1915 through 1924: The annual reports of the Commissioner of Indian Affairs listed Shinnecock as a tribal entity under the supervision of the New York Indian Agency.

1924: The Commissioner of Indian Affairs requested the New York Indian Agency to provide information about a Shinnecock court case involving removal of a non-Indian from the Shinnecock's state reservation.

1930: The Office of Indian Affairs' Chief Counsel reported to Congress on the status of the Shinnecock.

1937: The Attorney General of the United States authorized a Special Assistant Attorney General to participate in a Shinnecock trial.

1938 through 1941: The annual reports of the Commissioner of Indian Affairs listed Shinnecock as a tribal entity under the supervision of the New York Indian Agency.

1941: A subsection of the Department of the Interior's classic *Handbook of Federal Indian Law*, authored by Felix S. Cohen, provided a detailed description of the Shinnecock tribal entity.

1948: Congress passed the Criminal Jurisdiction Act that applied to law enforcement on the Shinnecock's reserved lands.

1950: Congress passed the Jurisdictional Act that applied to civil jurisdiction over the Shinnecock's reserved lands.

2005: A U.S. District Court in New York found that the Shinnecock met the common law standard for tribal existence, *i.e.*, demonstrating historically that it was "a body of Indians of the same or similar race, united in a community under one leadership or government, and inhabiting a particular though sometimes ill-defined territory." Shinnecock is the only acknowledgment petitioner ever found by a Federal court to meet this standard.

If the Shinnecock petitioner could not meet the DOI's administrative standard for previous acknowledgment based on these several examples of Federal identifications and relations over a period of 116 years, then it is clear that the

Fernandeño petitioner will not be able to meet the standard for § 83.12 based on its limited number of identifications during the period from 1885 through 1904.

The 2015 revised regulations make it much clearer that the petitioner's documentation must evince the existence of a government-to-government relationship between the Federal Government and an Indian entity. Based on the evidence the Fernandeño petitioner has presented for unambiguous previous Federal acknowledgment under § 83.8 of the 1994 regulations, it is not advantaged by the revisions in § 83.12 of the 2015 regulations. It still will not be able to meet the standard for unambiguous previous Federal acknowledgment and, therefore, it will not manage to reduce its burden of proof for evidence of identity as an Indian entity, community, and political influence or authority.

Even if the Fernandeño petitioner was found to have been previously acknowledged as late as 1904 under the 2015 regulations, this would give it only a slight advantage over the starting date of 1900 for criteria 83.11(a) and (c). It would likely be able to meet criterion 83.11(b), community, at present (see below), but it would not meet criteria 83.11(a), identity as an Indian entity, and 83.11(c), political influence or authority, since 1904 based on its existing evidence.

### **Criterion 83.11(a), *Indian Entity Identification***

#### Explanation of the Criterion and Its Requirements

In the revised 2015 regulations, this criterion read as follows:

**a) *Indian entity identification.* The petitioner has been identified as an American Indian entity on a substantially continuous basis since 1900. Evidence that the group's character as an Indian entity has from time to time been denied will not be considered to be conclusive evidence that this criterion has not been met. Evidence to be relied upon in determining a group's Indian identity may include one or a combination of the following, as well as other evidence of identification.**

- (1) Identification as an Indian entity by Federal authorities.**
- (2) Relationships with State governments based on identification of the group as Indian.**
- (3) Dealings with a county, parish, or other local government in a relationship based on the group's Indian identity.**
- (4) Identification as an Indian entity by anthropologists, historians, and/or other scholars.**
- (5) Identification as an Indian entity in newspapers and books.**
- (6) Identification as an Indian entity in relationships with Indian tribes or with national, regional, or state Indian organizations.**
- (7) Identification as an Indian entity by the petitioner itself.**

This wording is almost the same as that contained in § 83.71(a) of the 1994 regulations, except that the revised regulations have added a new category of evidence in § 83.11(a)(7) that provides that the identification can be "by the petitioner itself," although this internal evidence must still be combined with one or more kinds of external identification (by Federal authorities or State governments, for example) in order to meet the criterion.

Criterion 83.11(a) is included among the seven mandatory criteria in 25 CFR 83 to prove the continuous ethnic identity of a petitioner since 1900. It demands continual identification of a specific tribal entity since that time. The requirement for continuous identification as an Indian entity complements criteria 83.11(b), (c), and (e). The criterion is intended to exclude from acknowledgment those groups that have only been identified as being tribal entities in recent times. It also is intended to exclude those groups whose "Indianess" is based solely on self-identification or, in other words, on documents or other evidence generated by the group itself.

The OFA has established in previous cases that the minimum standard of evidence for meeting criterion (a) is to provide at least one source of acceptable identification of the entity for each of the twelve decades since 1900.

The qualification that identification of the petitioner must be on a “substantially continuous basis” allows for certain gaps in time during which the group’s existence or activities may not have been documented. Many, if not most, petitioners find that they have such gaps. In evaluating the significance of these gaps, the OFA staff has frequently used the “tunnel” test. The analogy is to a train that goes in and out of a tunnel. If a train (petitioner) is reasonably identified and characterized prior to going into a tunnel (gap), and once it comes out of the tunnel (gap), it has the same identity and character, then it can be reasonably assumed that it remained fundamentally the same while it was in the tunnel (gap). The gap of evidence for criterion (a) can be as many as 19 years as long as there is at least one source for every decade. For example, if there is a source of sufficient evidence for 1910 but the next sufficient source is not until 1929, this would meet the minimum standard because it would provide one source for each of two decades, the 1910s and the 1920s.

The qualification that “evidence that the group’s character as an American Indian entity has from time to time been denied shall not be considered to be conclusive evidence that this criterion has not been met” allows for certain periods during which the identity may have been characterized as being other than Indian. For example, a tri-racial group may have been identified as being White, Black, Negro, mulatto, colored, etc.

Criterion 83.11(a) evidence should focus on the identity of the group as a distinct Indian tribal entity rather than on the Indian identity of its individual members or on a larger group of Indians, such as the broad category of landless Mission Indians of California. The regulations state that the criterion may be met by using

only one of the six categories of evidence specified, ranging from Federal records to other Indian tribes. However, most petitioners will not have continued identity from one source since 1900, and so are likely to have to demonstrate identity using two or more categories of evidence .

Federal identifications might include executive orders, unratified agreements, appropriations or other acts of Congress; census or annuity rolls, military, court, or claims records; maps or land records, or the health, education, or welfare records of the Bureau of Indian Affairs or other Federal agencies. Petitioners who can establish "unambiguous previous Federal acknowledgment" only have to demonstrate identification as an Indian entity since the date of last Federal acknowledgment. They also must show that they are the same tribal entity that was previously acknowledged or that has evolved from that entity. Unambiguous previous acknowledgment is only an advantage for criterion 83.11(a) if the date of that prior recognition is after 1900.

Section 83.12(b)(2) of the 2015 regulations modifies criterion 83.11(a) for groups claiming previous Federal acknowledgment, as does the Fernandño petitioner, by providing that they only need to provide evidence of identification as a tribal entity since the time of previous Federal acknowledgment. Since the Fernandño petitioner's latest date of claimed previous acknowledgment is 1904, meeting the criteria for § 83.12, previous Federal acknowledgment, would not give it much of an advantage in meeting the 83.11(a) criterion because it would only reduce its burden of proof for this criterion by four years. As noted above, it does not appear that the Fernandño petitioner has sufficient evidence to meet § 83.12.

The petitioner submitted a 33-page supplement in 2015 entitled "Supplement Federal Recognition §83.7(a)." Despite the fact that the petitioner has elected to be evaluated under the 2015 regulations, this supplement did not address the

critical new category of evidence for criterion 83.11(a) in those revised regulations and that is "identification as an Indian by the petitioner itself." While the supplement purports to be providing further information for criterion 83.7(a), the mandatory criterion for Indian entity identification in the 1994 regulations, which also has an evaluation starting date of 1900, most of it (22 of the 33 pages) presents evidence and arguments for the period prior to 1900, which is irrelevant to the evaluation for criterion 83.11(a). Much of the supplement is also devoted to further evidence and arguments for previous Federal recognition or acknowledgment of the Fernandefio entity, which should have been presented in addressing §83.12 of the 2015 regulations.

#### **Comments on the Fernandefio Decade-by-Decade Evidence for Criterion 83.11(a)**

##### 1900 to 1910

The March 22, 1904, article in the *Los Angeles Times* describing Rojerio Roja as "the oldest of the San Fernando Mission Indians" (Disc File 2009.9 Nov.a.pdf, fr. 61) qualifies as external identification of a Indian entity. Thus, it permits the Fernandefio petitioner to meet the minimum standard for criterion 83.11(a) for the decade 1900 to 1910. Special Agent H.N. Rust's 1904 description of Roja as "almost the last of the Mission Indians of San Fernando" (Disc File 2009.9 Nov.a.pdf, fr. 62) also provides positive evidence for criterion 83.11(a). The other evidence presented for this decade fails to specifically identify a San Fernando Indian entity, but rather references a broader group of Mission Indians or Indians of Northern California (Disc File 2009.9 Nov.a.pdf, fr. 62-62).

##### 1910 to 1920

Ethnologist J.P. Harrington's 1916 field notes on Fernandefio describes Indian individuals rather than a tribal entity. The Fernandefio petitioner establishes the links between these individuals by using other sources rather than Harrington's actual descriptions (Disc File 2009.9 Nov.a.pdf, fr. 64-65). In its 2001 Proposed

Finding to decline acknowledgment of the Ohlone/Costanoan Muwekma Tribe (aka the Muwekma Ohlone Tribe of the San Francisco Bay), the DOI stated that:

Harrington collected historical information about Indians and linguistic information about historical Indian languages. He did so by interviewing living Indians without identifying them as members of any Indian group or entity in existence at that time. For this reason, Harrington's ... field notes do not provide evidence of the identification of a contemporaneous Indian entity which meets the requirements of criterion 83.7(a)" (p.11).

Although Harrington did state that "Rogerio or Rodger was chief at San Fernando" (Disc File 2009.9 Nov.a.pdf, fr. 65), this is not a contemporary identification of an existing entity because Rogerio Roja died in 1904.

The petitioner's 2015 supplement for criterion 83.7(a) presents further information about J.P. Harrington and his informants (pp. 25-27). However, it does not present any evidence that the ethnologist identified a then existing tribal entity.

None of the other evidence presented for this decade specifically identifies a San Fernando Indian entity. Rather, it all references a broader group of "homeless Indians," "Indians in California," and/or "Landless Indians in California" (Disc File 2009.9 Nov.a.pdf, fr. 63-65). Therefore, the Fernandeano petitioner fails to meet criterion 83.11(a) for the period 1910-1920.

#### 1920 to 1930

The evidence presented by the Fernandeano petitioner for 1920 does not meet the standard of external identification of a distinct Indian entity. Field Secretary Collett's letter, Commissioner Meritt's testimony to Congress, the Congressional Report, and ethnologist Albert Kroeber's statements all refer generally to the status of California Indians (Disc File 2009.9 Nov.a.pdf, fr. 65-69). Field Secretary Collett's 1921 letter and that of a Special Assistant to the Attorney General in 1924 refer to the "California Indians" and the "Mission Indians of

California,” respectively (Disc File 2009.9 Nov.a.pdf, fr. 69). Albert Kroeber’s 1925 writings describe the “Indians of this region, Serrano, Gabrielino, and Luiseño,” and also makes a specific reference to “Tataviam” (Disc File 2009.9 Nov.a.pdf, fr. 69-70). The petitioner makes an argument that Kroeber’s reference to Serrano should also be read as relating to Tataviam, but the ethnologist does not identify a distinct entity related to the San Fernando Mission among the subgroups that constitute part of either the Tataviam or Serrano (Disc File 2009.9 Nov.a.pdf, frame 70).

The 1927 article in the *Kansas City Times* describes Rojerio Rocha as an individual Indian related to the San Fernando Mission, but it does not identify either a distinct tribal political entity or community with which he might have been associated. Neither is it a description contemporary to the 1920s, as Roja died in 1904. The 1928 letter in the *Congressional Record* and the Secretary of the Interior’s letter to Senator Frazier in that same year both refer to the general status of California Indians (Disc File 2009.9 Nov.a.pdf, fr. 70-71). Thus, the Fernandeno evidence for the decade of the 1920s is insufficient to meet criterion 83.11(a).

#### 1930 to 1940

Ethnologist J.P. Harrington’s 1933 notes refer to Martin Feliz as an Indian man who knew a few Fernandeno words that he learned from Rogerio Rocha, but as in his 1916 notes (see above) Harrington does not specifically identify a distinct Fernandeno political entity or community (Disc File 2009.9 Nov.a.pdf, fr. 71). Solicitor Margold’s 1935 letter describes the DOI’s California project located on tracts purchased for landless Indians without reference to any specific tribal entities (Disc File 2009.9 Nov.a.pdf, fr. 71-72). The Mission Agency’s 1937 letter describes 2,956 Indians enrolled on Mission census rolls and approximately 4,000 Indians that are unenrolled. It does not identify any specific tribal entities whether enrolled or unenrolled. Therefore, once again, the Fernandeno

evidence for the 1930s fails to demonstrate external identification of a distinct tribal entity related to the petitioner.

The petitioner's 2015 supplement for criterion 83.7(a) presents information about how various Fernandefio descendants identified themselves on applications during the early 1930s for the 1928 California Indian Judgment roll (pp. 27-30). In response to the question "What is your degree of Indian blood and to What Tribe or Band of Indians do you belong?," Garcia family members answered with four variations of San Fernando Mission Indians. In response to the question of who was the leader of the Tribe or Band, Garcia family members answered Rogerio Rocha, whereas Ortiz family members who also applied could not name a leader. The supplement describes in detail how applications were verified by knowledgeable witnesses and Federal officials, such as Fred A. Baker. However, this whole application process was aimed toward lineage verification; to demonstrate that the applicants were the legitimate descendants of an historical California tribe or band that existed in 1852. The information presented about the applications and their verification identifies Indian individuals that descended from the San Fernando Mission, but it does not identify a then existing Fernandefio tribal entity that functioned as a distinct community under the political influence or authority of contemporary leaders.

#### 1940 to 1950

Antonio Maria Ortega's 1941 obituary in the *San Fernando Valley Sun* describes him as an Indian "reputed to be the last of the old San Fernando Mission residents." It also describes a large extended family who "all live in San Fernando." However, this obituary only describes one large family and does not identify a larger tribal entity or community (Disc File 2009.9 Nov.a.pdf, fr. 72). The 1948 legal opinion describes the status of unrecognized Indian groups in California and unrecognized political coalitions such as "the Indians of California" or the "Indians of California, Inc." or the "Mission Indians of California" or the

"Federated Indians of California," but it does not identify a distinct Fernandefio or Tataviam tribal entity. The petition editorializes on this document to indicate that the "Fernandefio Indians of San Fernando" followed a pattern of "being composed of several political autonomous lineages...which engage in cooperative and friendly relations. Political leadership is often focused with lineage headmen, or captains, and who have limited executive powers, and who rule with consent from their families" (Disc File 2009.9 Nov.a.pdf, fr. 72-73). However, the sources used to evince external identification do not indicate what cooperative tribal organizations the Fernandefio Indians may have been associated with just as they fail to identify a distinct Fernandefio tribal entity. Furthermore, if political leadership was limited to designated lineage headmen without a broader political alliance with other descendants of the same historical tribe, it might easily be argued that the petitioner was a family entity during this period and not an identifiable tribal entity. The evidence presented for the 1940s is not sufficient to meet criterion 83.11(a).

#### 1950 to 1960

Alfred Kroeber's 1953 analysis of California land claims for what was likely the Indian Claims Commission (ICC), but is described by the petitioner as the Indian Court of Claims, identifies claims made for Fernandefio villages and the San Fernando Mission village brought by 46 bands that included damages suffered by the Fernandefios. Yet this analysis does not identify any specific Fernandefio tribal entity that was bringing these claims to the ICC (Disc File 2009.9 Nov.a.pdf, fr. 73). Likewise, ethnologist Robert Heizer's 1955 testimony before the ICC on Kroeber's California Indian population research addresses the issue of surviving descendants of historical tribal entities commonly thought to be extinct without specifically identifying Fernandefio or Tataviam descendants or an entity comprised of those descendants (Disc File 2009.9 Nov.a.pdf, fr. 73).

Kroeber's actual research findings identified 8 Fernandefio and 6 Gabrielino among the 600 individual applications he sampled from the approximately 40,000 Indians who applied for enrollment under a 1928 statute.<sup>1</sup> He also indicated that this number was "as always minima" (Disc File 2009.9 Nov.a.pdf, fr. 73). However, identity of a group of descendants is not the same as identity of a tribal entity and, even if it was, Kroeber did not describe a specific contemporary Fernandefio or Gabrielino tribal entity. The DOI addressed the issue of the applications under the 1928 law in its 2001 Proposed Finding to decline acknowledgment of the Ohlone/Costanoan Muwekma Tribe. It stated at page 12 that:

The [Muwekma] petitioner has submitted application forms for a share of any funds to be awarded under a 1928 act which allowed Indian claims to be made against the United States. The claims against the United States authorized by the 1928 act, as the petitioner acknowledges, were brought on 'behalf of the 'Indians of California,' not on behalf of a specific tribe or band. In preparing a census of California Indians, therefore, the BIA sought evidence of descent from an Indian who had resided in California in 1852. Some ancestors of the petitioner's members were accepted as having descent from a California Indian and were listed on the BIA's 1933 census. Other ancestors and members were added when that list was subsequently expanded.

The petitioner claims the inclusion of its ancestors on the BIA's 1933 census of the Indians of California, and revised lists produced in later years, as examples of external identification of the petitioning group. Applicants applied as individuals, and their statements about the historical tribe of their ancestors were a form of self-identification of an historical, not contemporary, entity. Because the census was one for the generic "'Indians of California,'" there was no need for the BIA to identify any specific tribe or band of Indians for the approved applicants. In 1940 correspondence, a BIA superintendent made the point that the BIA's claims roll did not identify an individual on the roll as a member of a tribal group.

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<sup>1</sup> The California Indian Jurisdictional Act of 1928 (45 Stat. 602) authorized the attorney general of California to bring suit in the U.S. Court of Claims on behalf of the Indians of California. The statute was intended to reimburse the Indians for land taken from them by the United States without compensation. The act created a roll of California Indians, which was finalized in 1933. Expenditures by the Federal Government on behalf of the Indians were to be deducted from the amount allocated to compensate them for lands lost.

These lists of generic "Indians of California" did not identify any specific Indian group or entity. Because these lists prepared for the claims case did not identify the petitioning group as an Indian entity, the evidence of the inclusion of individual ancestors of the petitioner on these lists is not sufficient to meet criterion 83.7(a)..

The documentation from the ICC proceedings that the Fernandefio petitioner has presented does not evince external identification of a tribal entity in the 1950s.

The petitioner's 2015 supplement for criterion 83.7(a) cites Mary Louise Contini Gordon's 2013 book entitled *IQ SLO 'W: The Making of a Modern Day Chief Charlie Cooke, Leadership in Restoring and Sharing Native Heritage* as evidence of identification of a Fernandefio tribal entity (pp. 31- 33). However, this book presents a very different narrative of the political organization of the San Fernando Mission Indians in the 1950s and 1960s than does the 2009 Fernandefio documented petition. It asserts that Charlie and Alvin Cooke, descendants in the Garcia lineage, began in the late 1950s to organize the descendants of the San Fernando Mission Indians. This implies that those descendants were not a recognizable tribal entity at that time. The Cooke brothers focused their organizing efforts on the descendants around Newhall and there is no indication of their coordination with the organizing efforts of Rudy Ortega, Sr., in San Fernando at this same time. The book indicates that a small family group made Charlie their leader in 1959. The 2009 documented petition makes no reference to the Cooke brothers. Although Charlie Cooke's political leadership is referenced in the petitioner's 2015 supplement for criterion 83.7(c), Gordon's identification is not contemporary to the 1950s or 1960s since her biography was published in 2013.

#### 1960 to 1970

The Fernandefio petitioner's sole documentation for meeting criteria 83.11(a) during the 1960s in the 2009 documented petition is evidence of the formation of a youth baseball team by the "San Fernando Mission Indians" (SFMI) (Disc File

2009.9 Nov.a.pdf, fr. 74). Because the petition does not contain footnotes that specifically describe the external identifications, it is impossible to know, absent reviewing all the supporting documents, the source of this information. In as much as the previous documents used to evince criterion 83.11(a) since 1904 have not identified a specific tribal entity known as the SFMI, it is not possible from this information to determine the precise link between the petitioner and this named entity. If SFMI was a viable entity in the 1960s, one would expect that outsiders would know more about it than the fact that it formed a baseball team. Therefore, this evidence does not appear to rise to the level of valid external identification of the existence of a tribal entity during the 1960s.

The 2015 supplement for criterion 83.7(a) again cites evidence from Mary Louise Contini Gordon's 2013 book on Charlie Cooke as evidence of entity identification in the 1960s:

Charlie started to bring people together in Newhall who had records of ancestry at the San Fernando Mission. In 1960, about thirty Indian people all came together to form the San Fernando Mission Band with Charlie and Alvin as founding members. ... In 1968 the bothers started calling meetings for people of Indian descent to inform them of their rights and to enroll them on the California Indian Land Settlement Roll (p. 32).

This evidence again identifies a group of descendants of the San Fernando Mission and not an ongoing tribal entity. It is also a source of identification that is not contemporary to that decade but published more than 40 years later. As already noted, this information presents a very different narrative of the political organization of the San Fernando Mission Indians than does the 2009 Fernandeno documented petition, which makes no reference to the Cooke brothers. This evidence calls into question why, if they played such a critical political role, the activity of the Cooke brothers was not referenced by any of the informants that provided oral histories for the 2009 documented petition. It is also does not jibe with the information presented in that petition that the San Fernando Mission Indians entity was established in 1968 under the leadership of

Rudy Ortega, Sr. One wonders if the two sources are describing the same organization or in fact two entities that were geographically separated.

1970 to 1980

The Fernandño petitioner's evidence for this decade in the 2009 documented petition consistently identifies a tribal entity known as the SFMI formed in 1968 and headed by Rudy Ortega (Disc File 2009.9 Nov.a.pdf, fr. 74-76). These repeated external identifications appear to meet the standard for criterion 83.11(a) for the 1970s.

The 2015 supplement for criterion 83.7(a) presents a new source for the identification of the SFMI entity, a doctoral dissertation by Wayne G. Bramstedt accepted by UCLA in 1977 (p. 32).

1980 to 1990

The Fernandño petitioner's evidence for this decade does not specifically identify an entity known as the SFMI. The four documents for 1985 (four of the five documents for the 1980s) do not name a specific entity, but rather describe efforts of Fernandño and Gabrielino descendants to repatriate the bones of their ancestors. One of these documents identifies Rudy Ortega as "a Fernandño Leader" (Disc File 2009.9 Nov.a.pdf, fr. 76-77). A 1989 California Indian Legal Services brief described Ortega as the "elected Chief of the 'Fernandenos tribe'" and noted that the 'Fernandenos' were not a federally recognized tribe (Disc File 2009.9 Nov.a.pdf, fr. 77). This document meets the minimal standard for evidence of external identification for the 1980s.

The 2015 supplement for criterion 83.7(a) presents an additional source for the identification of the SFMI entity in the 1980s, the academic research of Joan Weibel-Orlando. However, the supplement does not provide a full citation to this work.

1990 to 2000

The Fernandefio petitioner's evidence for this decade consistently identifies a tribal entity. A March 1996 publication is the first to identify a Fernandefio Tataviam tribal entity, but the other four documents for the 1990s also identify this entity. Thus, the Fernandefio petitioner meets criterion 83.11(a) for this decade.

2000 to 2009

The Fernandefio petitioner presents ten documents for this decade, all of which evince the continued existence of a Fernandefio Tataviam tribal entity.

2009 to 2015

The Fernandefio petitioner does not present any new evidence for entity identification for this period in its 2015 supplement for criterion 83.7(a). However, the identity of the Fernandefio entity is well established in the previous decades since 1970 and it can reasonably be assumed that the petitioner could provide similar evidence for these years.

In sum, the Fernandefio petitioner appears to have failed to present sufficient evidence to meet criterion 83.11(a), identification as a tribal entity, based on external sources for more than half of the years since 1900 (60 of the total of 116 years). This 60-year gap in evidence runs from 1910 to 1970. Neither does the petitioner's existing evidence for criteria 83.11(b), community, and (c), political influence and authority, seem to provide sufficient internal documentation of the existence of a distinct Fernandefio tribal entity to fill this evidentiary gap.

As I note in detail throughout my extended comments, the petitioner's oral history evidence strongly suggests the absence of a functioning organic tribal entity whose members knew each other and their historical continuity and had

significant social relations and an interactive political relationship with recognized leaders until at least the mid-1950s. The statements of the informants give the impression that the people involved with the petitioner prior to that time did not have a collective identity as Indians or as a tribal entity and were not particularly inclined to organize. They also suggest that their organizer, Rudy Ortega, Sr. was trying to develop an Indian descendency or recruitment group rather than reorganizing a continuing tribal entity and that one of the incentives for organizing was the pursuit of claims.

If the petitioner cannot find further documentation of its identification as a tribal entity, this lack of evidence will be fatal to its case. The 2015 regulations provide that a petitioner's evidence will be evaluated in two defined phases: (Phase I) criteria 83.11(d), (e), (f) and (g) and (Phase II) criteria 83.11(a), (b), and (c). If the Fernandño petitioner is found to meet criteria 83.11(d-g) in a Phase I review but fails to submit adequate evidence for criterion 83.11(a) in Phase II, the OFA would publish a negative proposed finding based on this failure alone (see § 83.26(b)(4)).

### **Criterion 83.11(b), *Community***

#### Explanation of the Criterion and Its Requirements

This criterion reads as follows in the revised 2015 regulations:

**(b) *Community*. The petitioner comprises a distinct community and demonstrates that it existed as a community from 1900 until the present. Distinct community means an entity with consistent interactions and significant social relationships within its membership and whose members are differentiated from and distinct from nonmembers. Distinct community must be understood flexibly in the context of the history, geography, culture, and social organization of the entity. The petitioner may demonstrate that it meets this criterion by providing evidence for known adult members or by providing evidence of relationships of a reliable, statistically significant sample of known adult members.**

**(1) The petitioner may demonstrate that it meets this criterion at a given point in time by some combination of two or more of the following forms of evidence or by other evidence to show that a significant and meaningful portion of the petitioner's members constituted a distinct community at a given point in time:**

**(i) Rates or patterns of known marriages within the entity, or, as may be culturally required, known patterned out-marriages;**

**(ii) Social relationships connecting individual members;**

**(iii) Rates or patterns of informal social interaction that exist broadly among the members of the entity;**

**(iv) Shared or cooperative labor or other economic activity among members;**

**(v) Strong patterns of discrimination or other social distinctions by non- members;**

**(vi) Shared sacred or secular ritual activity;**

**(vii) Cultural patterns shared among a portion of the entity that are different from those of the non-Indian populations with whom it interacts. These patterns must function as more than a symbolic identification of the group as Indian. They may include, but are not limited to, language, kinship organization or system, religious beliefs or practices, and ceremonies;**

**(viii) The persistence of a collective identity continuously over a period of more than 50 years, notwithstanding any absence of or changes in name;**

**(ix) Land set aside by a State for the petitioner, or collective ancestors of the petitioner, that was actively used by the community for that time period;**

**(x) Children of members from a geographic area were placed in Indian boarding schools or other Indian educational institutions, to the extent that supporting evidence documents the community claimed; or**

**(xi) A demonstration of political influence under the criterion in § 83.11(c)(1) will be evidence for demonstrating distinct community for that same time period.**

**Section 83.11(b)(2)** provides that petitioners can meet the criterion at any point in time by demonstrating one category of what is termed for the purposes of this evaluation as "High Evidence:

**The petitioner will be considered to have provided more than sufficient evidence to demonstrate distinct community and political authority under § 83.11(c) at a given point in time if the evidence demonstrates any one of the following:**

**(i) More than 50 percent of the members reside in a geographical area exclusively or almost exclusively composed of members of the entity, and the balance of the entity maintains consistent interaction with some members residing in that area;**

**(ii) At least 50 percent of the members of the entity were married to other members of the entity;**

**(iii) At least 50 percent of the entity members maintain distinct cultural patterns such as, but not limited to, language, kinship system, religious beliefs and practices, or ceremonies;**

**(iv) There are distinct community social institutions encompassing at least 50 percent of the members, such as kinship organizations, formal or informal economic cooperation, or religious organizations; or**

**(v) The petitioner has met the criterion in § 83.11(c) using evidence described in § 83.11(c)(2).**

To meet the requirements of criterion 83.11(b), the petitioner must be more than a group of Indian descendants with common tribal ancestry who have little or no social or historical connection with each other. Sustained interaction and significant social relationships must exist among the members of the group. Interaction should be broadly distributed among the membership, not just small

parts of it. Petitioners must show that interactions have occurred continuously since a given point in time.

The acknowledgment regulations also require that the petitioner be a community distinct from other populations in the area. Members must maintain at least a minimal social distinction from the wider society. This requires that the petitioner's members are differentiated from and identified as distinct in some way from non-members. The existence of only nominal differences provides no supporting evidence for the existence of community among the membership.

In essence, community as defined in the regulations means the continued maintenance of tribal relations. This requires that tribal members knew each other and interacted in various ways. Ideally, this interaction can be demonstrated by showing that there was intermarriage across tribal family lines and reasonable residential proximity of the tribal families within a defined geographic area. Community can also be shown, however, by evidence that tribal members visited each other, shared information, attended each other's life events, such as weddings and funerals, and/or discussed or even argued and fought over issues of importance to the tribal membership.

If an acknowledgment petitioner's present tribal membership is comprised of components or subgroups, as is the case with the Fernandño petitioner, then it must be demonstrated either that these components have always been socially and politically interactive or, if they were separate at one time, that they naturally became part of a single tribal community.

The settlement patterns and social relationships of the petitioner need to be documented and interpreted within the context of strategies used by the members to retain their distinct identity, social cohesion, and interaction. Actual interaction does not need to be evidenced if marriage and residential patterns

can demonstrate that the families lived in close enough proximity to make interaction probable.

The DOI has stated the following in previous cases:

*Historical Community: Methodology.* The regulations provide that, 'Community must be understood in the context of the history, geography, culture and social organization of the group' (25 CFR 83.1). Prior decisions indicate that for the time span from the colonial period [now 1789] to the 19<sup>th</sup> century, evaluation of community has not been tied to the specific forms of evidence listed in 83.7(b), but rather was evaluated more generally, under the provisions of the definition of community in § 83.1. This approach should be seen in the light of the preamble to the regulations, which states that some commenters to the 1994 revised regulations saw [the 1994 25 CFR Part 83] revision and the revised definition of community as requiring a demonstration of specific details of interactions in the historical past, and thus as creating an impossible burden . . . . A detailed description of individual social relationships has not been required in past acknowledgment decisions where historical community has been demonstrated successfully and is not required here . . . further, the language added to § 83.6 clarifies that the nature and limitations of the historical record will be taken into account (59 FR 38, 2/25/1994, 9287).

The relevant language follows:

Evaluation of petitions shall take into account historical situations and time periods for which evidence is demonstrably limited or not available. The limitations inherent in demonstrating the historical existence of community and political influence or authority shall also be taken into account. Existence of community and political influence or authority shall be demonstrated on a substantially continuous basis, but this demonstration does not require meeting these criteria at every point in time . . . " (83.6(e)).

**Comments on the Fernandño Evidence for Criterion 83.11(b), Pre-Mission Period through 1951***Community, 1797 through 1846*

The petitioner's evidence for criterion (b), community was presented in its Disc Files 2009.9 Nov.b.pdf. and 2009.9 Nov.c.pdf. In these comments, references to the petition narrative are cited to image frame (abbreviated fr.) in the disk file rather than the page numbers as they appear on the copy of the 2009 narrative that OFA has posted on its website. Because the Fernandño petitioner submitted its documented petition under the 1994 regulations, it presented evidence for the community criterion going back to 1789 and before. Although the petitioner elected to be evaluated under the 2015 regulations and submitted an evidentiary supplement for criterion (b) in 2015, that supplement also addressed mandatory criterion 83.7(b), the community criterion under the 1994 regulations. Most of the information provided in this supplement deals with the period prior to 1900. Nearly all of the supplement provides further information about the social organization of the San Fernando Mission Indians and the specific lineage groups that comprise the Fernandño petitioner in the 19<sup>th</sup> century. While this information provides further historical background and context for the petition, it does not present evidence that is relevant to the OFA's eventual evaluation because the 2015 regulations specify that the evaluation period for criterion 83.11(b), community, begins in 1900.

The evidence for the period 1797 through 1846 presented in both the 2009 documented petition and the 2015 supplement is very strong, based primarily on residential proximity in a distinct community of the San Fernando Mission. There is no doubt that the petitioner would have been found to meet criterion 83.7(b) for this period under the 1994 regulations based on its more than adequate and sometimes High evidence demonstrating distinct social institutions, significant social relations, informal social interaction, shared or cooperative labor, social

distinction, shared ritual activity, distinct cultural patterns, and having a named collective identity for more than 50 years.

Community, 1847 through 1885

Following the Mexican government's sale of the San Fernando Mission land and resources in 1846, and in many cases before that date, the Fernandefios dispersed to find work on the scattered *ranchos* or returned to traditional villages. Some prominent Fernandefios were granted lands in scattered areas, but they all lost title to these tracts by 1885. The three primary lineage groups claimed by the petitioner (a small percentage of the total Fernandefio population) became spread out in communities at San Fernando, Newhall, Rancho Tejon, and Oxnard and Ventura in Ventura County (fr. 39). For example, the Ortega family was in the San Fernando village (fr. 36), the Garcia family was at Newhall (Santa Clarita)(fr. 34), and the Ortiz progenitor was at Rancho Tejon (fr. 33). There were more marriages to non-Indians (fr. 38-39) than in the period before 1846. While the petitioner has claimed the San Fernando Mission Indians as the historical tribe from which it descends, in the years following the sale of the Mission lands and the dispersal of its native population, the burden on the petitioner is to demonstrate that the three lineages it now claims continued to be a socially and politically interactive tribal entity.

The petition claims that each community where its ancestors resided was politically autonomous and that each lineage group had its own leaders (fr. 39, 44). This brings into question how the three remnant lineage groups can qualify as a tribal entity if they had no overarching political, cultural, or social organization or leadership. The petitioner establishes that Rogerio Rocha was the recognized captain of the remaining Fernandefios in the San Fernando village (1852-1904). He was granted a ten-acre farm near the village, from which he was evicted in 1885. Prior to that time, he shared his land and water with

other Fernandños. Although Rocha had social ties with the Ortega and Ortiz families and kinship ties with the Garcia lineage entity, he has no descendants in the petitioning entity (fr. 37-38).

The documented petition claims that the rule of lineage exogamy continued during the period 1847 through 1885, but it provides only a few examples, such as the partnership of Josephine Leyva (of the Garcia line) to Isodor Garcia (a Yaqui Indian) in 1880 or 1881 (fr. 34). The petitioner has not attempted to quantify the number of marriages between members of the three lineage groups or to other Indians. It claims that the Fernandños during this period "were engaged in an active network of social and kinship relations ... accentuated and extended by the adoption of Catholic forms of godparenting and witnessing, and traditional kinship ties to autonomous village-lineages" (fr. 46). Yet, the combined petition narratives (2009 and 2015) provide no examples of social relations or events that specifically encompassed all of the three lineages from which it claims descent (Ortega, Garcia, and Ortiz). Because the dispersed Fernandño tribal members no longer resided in a geographical area that was exclusively or almost exclusively composed of Indians significant social relations cannot be assumed during this period but must be specifically documented.

The combined petition narratives (2009 and 2015) also fail to document informal social interaction between all of the three lineages for the period 1847 through 1885. Again, because the historical tribal entity no longer resided in a geographical area that was exclusively or almost exclusively Indian, significant rates of informal interaction cannot be assumed. The ultimate purpose of the Acknowledgment criteria is to demand that petitioners demonstrate that they are a group of people that has come through time together. This cannot be done if they fail to provide evidence

that their specific ancestors did not have significant social relations and informal social interaction. The petition provides no examples of shared or cooperative labor or any other economic activity in which all three lineages were involved as a community during this period. While families still engaged in agricultural work, they did so in isolated places where they resided and never together in one community.

The petition describes the general pattern of discrimination against California Indians and their social distinction during the period through 1885, but provides no specific examples involving members of the three lineages or other Fernandinos. Although the petition establishes that the members of the three lineages were nominally Catholic (fr. 47), it provides no examples of them sharing Catholic ritual activity in the same church or other location. Sharing the faith generally is not the same as participating in a ritual event in the same community. The petition also claims that some traditional Indian rituals continued, yet it fails to provide any specific details about this activity or estimate how many, if any, of the members of the three lineages were involved.

The petition claims most of the Fernandinos retained native languages during the period through 1885, but it provides no specific examples involving its actual ancestors and does not quantify the number of native speakers. Based on its assertion that the three family lineages were autonomous and made their own social and political decisions, the petitioner could have tried to make a case for this representing distinct kinship organization but it has not. To support such an argument it would need to provide more specific examples of how the separate family lineages made social and political decisions. The petition leaves unexplored whether Catholic beliefs and practices or Spanish language and surnames made the families distinct from the non-Indian population in

the areas of settlement because it only vaguely describes the nature of other populations in the region. These cultural patterns would not make them distinct from the Hispanic communities.

In regard to the persistence of a named collective Indian identity during the period through 1885, the Indians of the San Fernando Valley continued to be identified collectively as the San Fernando Mission Indians or Fernandefios, as they had been since 1797. However, the petitioner's ancestors represented only a very small number of the Indians that shared this collective identity and evidence in the petition suggests that at some point members may have lost their collective identity (not knowing they were Indian and/or not knowing their tribal affiliation).

The petition claims "most of ancestors of the petitioning group lived at or near San Fernando during the 1847 to 1885 period" (fr. 48). Because it has not enumerated the number of ancestors during this period, it is not possible to determine what a majority might have been. The evidence it does present shows that after or just before the sale of the Mission lands in 1846, the three lineage groups of its ancestors were dispersed to several separate communities, some of which were a significant distance from the San Fernando village and the remaining Mission lands. While the Ortega and the Rogerio Rocha families were based in or near the San Fernando village (fr. 36-37), the Garcia-Leyva family was at Newhall (Santa Clarita) (fr. 34) about 13 miles to the northeast, and Ortiz family members were at Rancho Tejon (fr. 33), about 60 miles to the north. The family of Maria Rita Alipas, a progenitor of the Ortega line, was at Rancho Encino (fr. 35), about 16 miles to the southwest, and other lineage families were in Oxnard and Ventura (fr. 39), about 50 to 60 miles to the west. Because the families were not in close residential proximity to each other, community cannot be assumed. They were in fact far enough apart to

make regular social relations and informal social interaction difficult if not impossible, especially given modes of travel in the mid to late 19<sup>th</sup> century. The petition has not provided any specific examples of where or when members of all three lineages came together. Rather it maintains that the lineage entities in different locales were local and autonomous. Even if the majority of ancestors did reside within the San Fernando Valley during this period, this region was not then "a geographical area exclusively or almost exclusively composed" of either ancestors of the petitioning entity or Fernandinos generally.

The petition claims that it meets the High Evidence standard for having "distinct community social institutions encompassing at least 50 percent of the members, such as kinship organizations, formal or informal economic cooperation, or religious organizations" for the period from 1847 through 1885 based on "long standing social, political, and kinship relations" (fr. 49). However, it misses the point that relationships between families are not community social institutions. Successful petitioners, such as the Narragansett and Mohegan in New England, which have solidly evinced community institutions, have demonstrated that involvement in a single church, a church organization, and/or a burial ground or cemetery encompassed most of their members. The Fernandino petitioner has not demonstrated that it had any distinct community kinship, economic, or religious institutions during this period.

In sum, the petitioner would have likely been found under the 1994 regulations to approach meeting only one category of evidence for community during the span of years from 1847 through 1885 and that is having "a named, collective Indian identity continuously over a period of more than 50 years." Although it might have technically met this category, as noted above its ancestors represented only a very small number of the Indians that shared this collective identity and later evidence in the petition

suggests that at some point members may have lost their collective identity.

Community, 1885 through 1951

The 2015 revised regulations shortened the evaluation period for criterion (b) community, moving the starting date from 1789 to 1900. This change is a mixed blessing for the Fernandño petitioner. On the one hand, it eliminates a period for which it appears to have only minimal evidence for community, 1847 through 1899. On the other hand, it also erases the need to meet the criterion during the only period for which the petitioner appears to have High Evidence of community, 1789 through 1846.

As in the period after 1846 and before 1900, the petitioner's three lineage lines remained geographically scattered from one another. The petition continues to maintain that these families were autonomous (Disc File 2009.9 Nov.c.pdf, fr. 5). It makes reference to maps the petitioner provided to the OFA showing the birth and death places of entity members between 1920 and 2009 (fr. 6). What would have been more helpful in demonstrating whether criterion 83.11(b) is met would have been maps depicting the residential location of members for as many time periods as possible. In the late 1920s, the family of Joseph Ortiz, described as a captain of that family line, moved from Bakersfield to San Fernando (fr. 6, 9). In the 1930s, there was a residential cluster of six Ortega/Ortiz families within walking distance in San Fernando (fr. 7). The petition claims that all the lineage lines took part in activities at the San Fernando Mission, such as July 4<sup>th</sup> celebrations (fr. 8), Mission-sponsored fiestas (starting in 1931) (fr. 10-11), and "San Fernando Day" festivities (starting in 1946) (fr.12), as well as in family events such as baptisms and funerals (fr. 8, 11 (ftn. 253).

Following the death of Rogerio Rocha in 1904, the petition maintains that Antonio Maria Ortega (of the Ortega lineage group) became the captain of the

Fernandeños and served in that capacity until 1941 (fr. 3-4). The petition presents little, if any, evidence of what Antonio Ortega did to provide leadership or documentation to evince that he had political influence or authority over all three of the lineage families. It establishes that Ortega was mentally challenged by the mid-1930s and that his funeral in 1941 "was well attended by members of the Band and the general San Fernando community" (fr. 8). The informant describing the funeral did not establish that the mourners included representatives from all three of the petitioner's lineage families (fr. 8, fn. 236).

The petition states that its predecessors held meetings and participated in native dances and fundraising activities in the 1930s. However, the interviews on which this information is based do not establish that these events encompassed all of the petitioner's three lineage families (fr. 11, fn. 252-253). Following the death of Antonio Maria Ortega in 1941, the petition states that his eldest son Estanislao became the captain of the Fernandeños until his own death in 1951 (fr. 12). The petition indicates that Estanislao Ortega visited families throughout the San Fernando Valley and "raised funds, gathered funds for tribal funerals, organized family gatherings, held festivals, and meetings among the families" (fr. 12). In addition, he "collected and distributed food for elderly community members" (fr. 12-13). These statements appear to be based solely on the oral history testimony of Estanislao's son Rudy Ortega, Sr., who later played the key role in actually bringing the petitioner's three lineage families together (see below). His interviews, at least as quoted in the petition narrative, provide little or no description of specific events and fail to establish that these activities encompassed all three of the petitioner's lineage families (Ortega, Ortiz, and Garcia). They also fail to distinguish the extent to which these activities also involved the larger group of Fernandeños and other Indians and/or the general San Fernando community, including non-Indians, as opposed to just the petitioner's three claimed lineages (fr. 12 and fn. 257, 259; fr. 13 and fn. 260).

The petition posits Vera Ortega Salazar as a family leader who helped preserve the Indian cultural heritage of the Fernandefios and who, in the early 1940s, also encouraged young Rudy Ortega, Sr., to learn more about the families and create a more formal organization (fr. 13-14). Again, this information is based solely on the statements of Ortega family informants (fr. 13-14, ftn. 264, 266-267). No indication is given that Vera Salazar also had influence on Ortiz and Garcia family members.

The political issue focused on during this period was whether entity members should apply for the "1928 California Judgment Act Roll" (the roll created by the California Indian Authorization Act of 1928). Estanislao Ortega thought that the Ortega lineage group should not apply, but his son Rudy Ortega, Sr., disagreed (fr. 13). The elder Ortega feared that enrollment would eventually lead to being relocated to a reservation (fr. 24). This apprehension caused the entire Ortega line of descendants to refuse to enroll (fr. 25). However, members of the Ortiz and Garcia lines did apply and were enrolled. Although the petition narrative repeatedly presents this as a key political issue, it provides no specific examples of meetings or other gatherings in which the issue was discussed by all three of the lineage families. It may evince the political influence of Ortega family leaders within their own line, but it does not demonstrate their political influence over a broader tribal group, because they did not influence the decision of those outside their family who chose to enroll.

The petitioner's 2015 supplement for criterion 83.7(b), community, describes Garcia lineage gatherings that organized by Francis Garcia Cooke up to 1946 and thereafter by her daughter Mary Garcia and Ortiz lineage gatherings organized by Antonio Maria Ortiz and his wife Ysidora up to 1931 and by their daughter Vera Ortega Salazar thereafter until the late 1970s (p. 30). However, the supplement does not present evidence of gatherings that included all or most of the Fernandefio petitioner's lineage groups.

**Comments on the Fernandefio Documentation for Categories of Evidence for Criterion 83.11(b), 1900 through 1951**

**§ 83.11(b)(1)(i), Rates or patterns of known marriages within the entity, or, as may be culturally required, known patterned out-marriages.**

The petition claims that the rule of lineage exogamy continued during this period, but it provides no examples of Indian-to-Indian marriages.

**§ 87.11(b)(ii), Social relationships connecting individual members.**

The petition states that godparenting and in-law relations continued during this period. Yet, it provides no specific examples of godparenting relations. Except for the residential cluster of Ortega and Ortiz families in San Fernando, the three lineage lines remained geographically dispersed (see below), making regular social relationships across the three family lines difficult. While significant social relationships may be assumed for the families in San Fernando, because the petition does not enumerate the composite entity membership during this period, it is not possible to determine if the San Fernando families represented a significant portion of the petitioner's ancestors. The petition provides only one example of a social event at which all three family lines were represented, which is the funeral of Estanislao Ortega in 1951 (fr. 20). While OFA evaluators will likely give some leeway to interpreting that this event did not happen in a vacuum and that there was some level of social relationship between the families for some period before and after the Ortega funeral, this single event does not appear to be sufficient in itself to meet this category of evidence for the 65-year period. The petitioner might be able to strengthen its case for significant social relationships by better defining and enumerating the core San Fernando community and by specifically identifying other social events that encompassed all three families.

**§ 83.11(b)(1)(iii), Rates or patterns of informal social interaction which exist broadly among members of the entity.**

The petition fails again to document informal social interaction between all of the three lineages during this period. Such interaction may be assumed for the families living in close proximity in San Fernando, but because the petition has not enumerated the entire entity membership during this period and the locale of these members, it is not possible to determine if the families in San Fernando constituted a broad portion of the membership. If they in fact did represent a significant portion, the petitioner might be able to demonstrate that it meets this category of evidence.

**§ 83.11(b)(1)(iv) Shared or cooperative labor or other economic activity among members.**

The petitioner has not established that there was any shared labor or other shared economic activities among its members during this period.

**§ 83.11(b)(1)(v), Rates or patterns of discrimination or other social distinctions by non-members.**

The petitioner's oral history interviews provide evidence of discrimination against members in regard to housing, locales in which they were restricted from entering, use of native language in schools, and public display of native cultural affects. Informants state that members kept a low profile, tried to avoid public identification as Indians, and spoke Spanish so that they might pass as Mexican-Americans because of the prevailing racial bias against Native Americans (fr. 25-29). However, this specific evidence covers only the period since the 1920s (fr. 25) since it is based on descriptions provided by informants interviewed in 2009. Discrimination and social distinctions likely existed before this time, but they are not specifically documented in the petition.

**§ 83.11(b)(1)(vi), Shared sacred or secular ritual activity.**

The petition again attempts to meet this category of evidence by stating that most entity members were Catholic and practiced Catholic rituals such as baptisms, godparenting, and weddings (fr. 32). However, it had already established that members were nominally Catholic at best, and it provides no specific examples of baptisms, godparenting, or weddings during this period. Moreover, it indicates that Catholic participation was not tied to a specific church, but rather took place in many different churches. Petitioners who have met this category for shared sacred ritual activity have demonstrated that most of their members were participating in a single church within a defined community and thus were actually sharing these rituals side-by-side (see, for example, Narragansett Proposed Finding, 1982, p. 11).

**§ 83.11(b)(1)(vii), Cultural patterns shared among a portion of the group that are different from those of non-Indian populations with whom it interacts. These patterns must function as more than a symbolic identification of the group as Indian. They may include, but not be limited to, language, kinship organization or system, religious beliefs and practices, and ceremonies.**

The petition attempts to make the case here that some elder members spoke native languages, but it does not establish what portion of the then existing entity shared this distinct cultural pattern. As is noted throughout these comments regarding criterion 83.11(b), the petitioner has not claimed that the assertion that three family lineages were autonomous and made their own social and political decisions represents a distinct kind of kinship organization or system. If it could substantiate this claim with more specific evidence, it might be able to demonstrate that this is a distinct cultural pattern that is shared by virtually all members of the entity.

**§ 83.11(b)(1)(viii), The persistence of a collective Indian identity continuously over a period of more than 50 years notwithstanding any absence of or changes in name.**

The Indians of the San Fernando Valley continued during this period to be identified collectively as the San Fernando Mission Indians or Fernandefios, as they had been since 1797. However, the petitioner's ancestors represented only a very small number of the Indians that may have shared this collective identity. The oral history evidence suggests that at least some people later involved with the petitioner did not have a collective identity as Indians or as a tribal entity during this period. There is little evidence that the petitioner was identified as a distinct tribal entity within the broader community of Fernandefio descendants (see criterion 83.11(a) above).

**§ 83.11(b)(1) (ix), Land set aside by a State for the petitioner, or collective ancestors of the petitioner, that was actively used by the community for that time period.**

The petitioner has not submitted documentation regarding this new category of evidence in the 2015 regulations.

**§ 83.11(b)(1)(x), Children of members from a geographic area were placed in Indian boarding schools or other Indian educational institutions, to the extent that supporting evidence documents the community claimed.**

The petitioner has not submitted documentation regarding this new category of evidence in the 2015 regulations.

**§ 83.11(b)(1)(xi), A demonstration of political influence under the criterion in § 83.11(c)(1) will be evidence for demonstrating distinct community for that same time period.**

As with the period from 1846 through 1885, political influence or authority between 1886 through 1951 is not well established in the petition. It claims that each community where its ancestors resided was politically autonomous and that

each lineage group had its own leaders (fr. 39, 44). The petitioner's 2015 supplement for criterion 83.7(c) does a better job than does the documented petition of identifying the lineage leaders, but falls short in describing how they demonstrated their leadership and fails altogether in indicating how they interacted within an overall Fernandño entity. Apparently, the petitioner also provided the OFA with a list of its leaders in its 2009 response to the TA review. The petition establishes that Rogerio Rocha was the recognized captain of the remaining Fernandños in the San Fernando village (1852-1904) (fr. 37-38), but this leader has no descendants in the petitioning entity.

**Section 83.11(b)(2), High Evidence: The petitioner will be considered to have provided more than sufficient evidence to demonstrate distinct community and political authority under § 83.11(c) at a given point in time if the evidence demonstrates any one of the following:**

**§ 83.11(b)(2)(i), More than 50 percent of the members reside in a geographical area exclusively or almost exclusively composed of members of the group, and the balance of the entity maintains consistent interaction with some members in that area.**

The petition claims to meet this category of High Evidence because "over 50% of the direct line ancestors ...lived in or near San Fernando" (fr. 33). Again because it has not enumerated all of the ancestors during this period, an even approximate percentage of those residing in the San Fernando area cannot be determined. The petition does provide more evidence of residential clustering in San Fernando during this period. Since it states that the Ortega ancestors were there during this entire period and that "the Ortega descendants compose more than 50% of the contemporary band membership" (fr. 33), perhaps the petition is projecting this evidence backwards. The narrative for this period indicates that ancestors also were residing in several other locales, including but not limited to Kern County Tejon Ranch), Newhall (Santa Clarita), Oxnard, Ventura (fr. 33), Piru (fr. 2), Bakersfield (fr. 6), Fresno, El Rio, Los Angeles (fr. 7), and Camarillo (fr. 19). Furthermore, the petition has not established that either San Fernando as a whole or the neighborhood of its ancestors in San Fernando was "a

geographical area exclusively or almost exclusively composed of members of the group," as is required to meet this category of evidence.

**§ 83.11(b)(2)(ii), At least 50 percent of the members of the entity were married to other members of the entity.**

The petition does not claim that it meets this category of evidence for this period (fr. 33).

**§ 83.11(b)(2)(iii), At least 50 percent of the entity members maintain distinct cultural patterns such as, but not limited to, language, kinship system, religious beliefs and practices, or ceremonies.**

The petition claims that it meets this category of evidence based on native language use (fr. 34), but, as noted above, it has not demonstrated that even a significant portion of its members maintained this or any other pattern of distinct cultural attributes during this period. As is also noted above, the petitioner might be able to claim that the autonomous family lineages constituted a distinct kind of kinship system encompassing the entire membership, but the present petition does not assert that claim.

**§ 83.11(b)(2)(iv), There are distinct community social institutions encompassing at least 50 percent of the members, such as kinship organizations, formal or informal economic cooperation, or religious organizations.**

The petition does not claim that it meets this category of evidence for this period (fr. 34).

**§ 83.11(b)(2)(v), The petitioner has met the criterion in § 83.11(c) using evidence described in § 83.11(c)(2) (see below).**

The petition does not claim that it has High Evidence of political influence or authority for this period (fr. 34).

**Conclusions for Criterion 83.11(b), Community, 1886 through 1951**

The petitioner's present evidence appears to only meet two categories of evidence for community during some but not all of this period, with two important caveats. The categories are (1) having "evidence of strong patterns of discrimination or other social distinctions by non-members (§ 83.11(b)(1)(v)) and (2) having a collective Indian identity continuously over a period of more than 50 years" (§ 8311(b)(viii)). The limits of the evidence are that (1) specific information about discrimination and social distinctions only covers the period since the 1920s, since it is based on descriptions provided by informants interviewed in 2009, and (2) the petitioner's ancestors represented only a very small number of the Indians who shared the collective identity of being San Fernando Mission Indians or Fernandefios and evidence in the petition suggests that at some point during this period members may have lost their collective identity (not knowing they were Indian and/or not knowing their tribal affiliation).

The acknowledgment regulations require that a petitioner must meet a combination of categories of evidence for criterion 83.11(b). However, the combination of somewhat minimal positive evidence for § 83.11(b)(1)(v) and (viii) is not sufficient to carry the case for this period in the absence of strong evidence of significant social relations and informal social interaction. As noted above, the petitioner may be able to strengthen its case for significant social relationships by better defining and enumerating the core San Fernando community and by specifically identifying other social events that encompassed all three lineage families. If it could provide more specific examples of how the separate family lineages made social and political decisions, it might be able to use its assertion that the family lineages were autonomous to argue that this phenomena constitutes unique kinship organization that meets §83.11(b)(1)(vii), distinct cultural patterns. However, the present evidence in the petition does not meet criterion 83.11(b), community, for the required 52-year period from 1900 through 1951.

**Criterion 83.11(b), Community, 1952 through 2009**

The petition states that following the death of Estanislao Ortega in 1951, his eldest son Rudy Ortega, Sr. became the "captain of the Mission Indian lineages at San Fernando" (fr. 34). As a young man in the 1940s, Rudy Sr. began, with the urging of his aunt, Vera Ortega Salazar, to research family history and genealogy with the purpose of organizing a "social club for meetings and cultural activities" (fr. 13-14). His oral history information indicates that he did not identify as Indian in school and that he was angry after a teacher identified him as Indian for participation in a drum group. When he told his mother, she said "Well son, you are an Indian. When he then asked "What kind of Indian am I?", his mother replied "Ask you dad, your dad should know" (fr. 15, fn. 267). Another family informant indicated that Rudy Sr. "had a burning desire to know who he was, where they came from and to get that family lineage" (fr. 15, fn. 269). The petition indicates that Rudy researched the family histories and then "took on the task to gather the people together" (fr. 15).

This evidence strongly suggests the absence of a functioning organic tribal entity whose members knew each other and their historical continuity and had significant social relations. If the son of the claimed "captain" of the ancestors of the petitioning entity, and perhaps his mother, did not know what kind of Indian he was and apparently did not know related tribal members until he researched them in an effort to bring them together, this does not evince the existence of a vibrant interactive tribal community.

After starting these initial efforts before World War II, Rudy Sr. served in the Army for most of the 1940s (1941-49). After he returned to the San Fernando area, he resumed his organization efforts:

So I started getting the people together and after we got the people together, we said, well, what are we going to call it? I said, well,

that's up to you people what you want to call yourselves. Don't forget we were born here in San Fernando and we came from the San Fernando Mission so chose the name what you want to be called. He said, how about San Fernando Band of Mission Indians? I says that's fine, because I heard that they used to call us the San Fernando Mission Band Indians but then they took the Band out and they said San Fernando Mission Indians after that. So I says, okay fine, so that's what we started on. So my aunt [Vera Ortega Salazar] said, well let's do something on the club. So we started, I said, lets see what we can do? First, he says, we've got to find out if we are Indians or not. Oh, I said, here we go, I know what you are trying to say. None of my people want to do anything, they want everything on a silver platter, so I said, let's get all the people together and let's talk it over and we'll go down to the park and we'll talk it over and see what happens this summer. Okay, so that's what we did, we went over and a lot of people didn't want to do nothing. Oh no, it's too hard to do anything. What about Rudy? Well, if that's the case you're going to leave me holding the bag, then I'll go ahead and do it then, I'll try. I don't know a thing about archeologist, genealogist, but I'll see what I can find about our ancestors. Okay, so they were all happy about that. At that time, they came out news in the paper that they were going to give some money out to the tribes if they could prove they were native Americans. So, they says, come on, Rudy, let's hurry up and see if we can get some money (fr. 14-14, ftn. 267).

In an interview cited later in the petition, Rudy Sr. states that the organization was formed in the "middle of the fifties." "I was just thinking of trying to get the people together," he states, "and do some fun things together" (fr. 38, ftn. 337). Another informant when asked when he or she first started "hearing the name Tataviam," answered 'when Rudy made us aware and he made us all sign these roll papers back then" (fr. 37, ftn. 325). These statements suggest that the people involved did not have a collective identity as Indians or as a tribal entity and that they were not particularly inclined to organize. They also suggest that Rudy Sr. was trying to organize an Indian descendance or recruitment group rather than reorganizing a continuing tribal entity and that one of the incentives for organizing was the pursuit of claims.

According to the petition, the entity organized by Rudy Sr. adopted the name

"San Fernando Mission Indians" during the middle 1950s and created a booth with a tribal banner that it took to the festivals of various tribes (fr. 38). The entity held monthly meetings and "discussed issues and problems within the community and made decisions by consensus" (fr. 40). Rudy Sr. was officially recognized as the tribal coordinator of the San Fernando Band of Mission Indians in 1967 (fr. 40). One of the activities led by Rudy Sr. was an effort to get eligible people enrolled for what became the California Indian Judgment Fund of 1972. However, the entity was still not formally organized. Rudy Sr. recalled that he was reluctant to head an organization because "I had enough work trying to get this genealogy to get it for '68 [the Judgment Fund applications] to get everything done," but finally "almost at the seventies ... I said, Okay. Let's get the people" (fr. 40, fn. 347). He recalled further that:

When we had them at the Mission to give all the documents to everything [Judgment Fund applications], I says 'Everybody you want to have a group together? We'll have it' They said, 'Yeah. Let's have a group together.' 'We'll meet where?' They said, 'Let's meet here at the Mission.' 'Okay.' So we started getting the people together. We started meeting at the Mission for a while. The wintertime came, then we started meeting them at the homes. But then I started, I went to the County in Pacoima, which is the Department of Social Services, and I have a friend ... anyway he gave us an office. He gave us a phone. We didn't have to pay for this service. And he gave us paper. He gave us a typewriter (fr. 40, fn. 347). .

Rudy Sr.'s son Larry recalled that:

They called my father up and told him they wanted him to be a leader. So my father started putting things together, projects and all of that, and the next thing you know the organization just started growing with the family [emphasis added], and then we started getting people [to] say they were Indian. So it started building up that way .... (fr. 44).

Rudy Sr. was officially recognized as the tribal coordinator of the San Fernando Band of Mission Indians (SFBMI) in 1967. The organization adopted bylaws in 1972, met monthly to discuss "issues and problems within the community, and

made decisions by consensus (fr. 40). The petition maintains that "Rudy Ortega and community assisted about 500 individuals to apply for the 1972 California Indian Judgment Roll" (fr. 45). As this is a much larger number of people than would have comprised the petitioner's three lineage families during that period, this statement adds to the confusion at many points in the petition between the community and leadership of the three family lines now claimed by the petitioning entity and the much broader and larger group of descendants of the Indians that had been gathered together at the San Fernando Mission. For example, the organization headed by Rudy Sr. established the San Fernando Mission Inter-Tribal Club (which in 1973 was incorporated as San Fernando Valley Inc. (SFMITI). The petition describes this non-profit entity as being "the center for organization and government for the San Fernando Mission Indians" (fr. 45). While it is clear from descriptions that the non-profit was serving the broader community of Indians (essentially any needy Indian, see fr. 460), it is not clear if its governance also served that community or just the three family lines of the petitioner. The SFMITI charged membership dues, managed social and community support services, and sponsored cultural events. Rudy Sr. served as president, but its board consisted of "band members and non-band members" (fr. 46). In 1976, the tribal government was organized under separate bylaws as the Fernandeno Band of Mission Indians (fr. 47).

The petition claims that in the 1950s "most tribal members [were] concentrated within a three mile radius of old town San Fernando, and virtually all tribal members (emphasis added), a mix of Ortega and family households, lived within an 8-mile radius of old town San Fernando and within 3.5 miles of old town San Fernando" (fr. 39). This proximity of members is illustrated on Google maps that were submitted to the DOI but are not a part of the response materials evaluated here. One must read further to understand that virtually all tribal members does not mean all of the petitioner's members, but instead means all members that lived in close proximity to San Fernando. The petition explains that other

families lived in Fresno and Ventura.

The petition states that "families gathered for funerals and tribal events during the 1950s' (fr. 39). The interview to which this information is cited indicates that there were gatherings in Newhall and that most weddings and funerals were held at the San Fernando church (f. 39). Although this statement is not too specific, it does suggest that there was periodic social interaction between the petitioner's three lineages.

The petition indicates that during the 1960s the membership became more dispersed but that the majority continued to live "within a three mile radius of old town San Fernando, and, with few exceptions, nearly all tribal community households were located within ten miles of old town San Fernando" (fr. 40). The petition states that during that decade "the families had regular meetings where identity and tribal related issues were discussed and decisions made in traditional leadership and meeting patterns" (fr. 41). The source for this statement is cited to two interviews. The first informant described gatherings of her extended family ("my dad's brothers and sisters" and "kids" ) where there were discussions about tribal issues, but admitted that these were memories as a "young kid" and that he or she had not been involved since "45 years ago maybe" (fr. 41, ftn. 353). The second informant also talked about family gatherings in terms of "all my uncles and aunts," where issues were discussed, sometimes using native language, but he or she was also a child at the time and gatherings he or she most remembered took place in Bakersfield and not in the core area of San Fernando (fr. 41-42, ftn. 353). Neither informant described any leadership or decision-making pattern. Nor did they provide any evidence of gatherings that involved all the petitioner's three lineage families.

The petition states that

During the 1970s eighty six percent of San Fernando Mission

Indian (40 of 46 households) continued to live in the eastern portion of the San Fernando Valley, mainly in the towns of San Fernando, Pacoima, Sylmar, Mission Hills, Van Nuys, and a few others. The majority of tribal members lived within a three mile radius of old town San Fernando, and lived within a 10 mile radius (fr. 47).

In regard to social interaction in the 1970s, the petition indicates that "Members of both the Ortega and Ortiz families actively engaged in community events, some intermarriage, and continued relationships started as children in local San Fernando neighborhoods (fr. 48). The interview that is cited as the source of this information mentions gatherings and marriage connections, but it does not specifically describe social interaction or intermarriage between the Ortega and Ortiz families or interaction with the petitioner's third family line (Garcia).

The petition states further that during the 1970s

Picnics, camp outs, fund raisers, and meetings at people's houses were both social and political events and entire families were invited. Social activities, children's activities, potluck dinners were carried on as elders and adults gathered to discuss issues, often federal recognition, and to produce the necessary paperwork (fr. 48).

The interview on which this information is based generally substantiates this statement, but does not specifically describe the families involved.

For the 1980s, the petition states that

"information on residency patterns is less complete ... Nevertheless, the available residence data indicates that most Tataviam tribal members lived within a radius of a few miles around the old town part of San Fernando, near where the San Fernando Mission was located ... (fr. 50).

It continues:

Most tribal members maintained residences and major life events occurred within the eastern San Fernando Valley. The community is more dispersed within the valley and around the country, but

most tribal members lived within a short driving distance to the Mission and the old part of San Fernando where the Ortiz and Ortega families were long time residents. Community members participated in family-tribal events, despite the urban environment around them. The Tataviam community organized powwows, Christmas parties, and protected sacred sites and burial grounds whenever possible (fr. 51).

The residential pattern is documented on Google maps that the petitioner provided to the OFA. The source for the statement on "family-tribal events" describes certain events held at the Mission church without any indication of the families involved. The sole annotated source for the statement of other activities describes only the Christmas parties organized by Rudy Sr., which ended in 1990 and again does not indicate the specific families involved. However, four other unannotated sources are cited for this statement and these likely describe other events and may indicate the families involved.

In 1995, the petitioner requested its members to more formally register for membership, including submission of ancestry charts, and a more accurate and extensive tribal roll was developed (fr. 51). In regard to residential patterns during the 1990s, the petition states that:

Nine households moved from the San Fernando Valley and took up residence in the communities of Lancaster and Palmdale. All nine households in the Lancaster-Palmdale area are from the Ortega lineages. ....The households, about 40 to 50 miles distant from San Fernando, continued [to] participate in the Tataviam community and government. ...about another 20 households were not located in the San Fernando Valley. There were four households of the Ortiz family in the Fresno-Hansford area, and four households of the Ortega family in Simi Valley, Santa Barbara, and Oxnard area. In addition there were households in Long Beach, Whittier, Rosemead, and San Diego. ... [other households are in] Oregon, Pueblo, Colorado, and Redlands, CA. ... about 33 households remained in the eastern San Fernando Valley, while about 30 households are outside of the San Fernando Valley (fr. 51).

What is most significant about the move of the Ortega families to Lancaster-

Palmdale is that it included the petitioner's primary political leader Rudy Sr. Despite the greater dispersion of its members, the petitioner held many more entity activities during the decade of the 1990s and these events are better documented in sources such as newspaper accounts rather than just being dependent on information provided by informants in oral history interviews. The petition states that the entity held powwows until 1998 and that it established a newsletter (fr. 52). It claims that "funerals were widely attended," although the source for this information does not specifically reference attendance by the Garcia lineage members (fr. 52, fn. 396). The petition describes ceremonial activities, cultural demonstrations, fundraising events, and the existence of a council of elders (fr. 53). Again, the sources cited for this information do not specifically reference the participation of the Garcia lineage members. However, in 1999, the petitioner's newsletter did note the passing of two of the "Newhall Garcias" (fr. 53).

In the period from 2000 through 2009, the petitioner's membership became even more dispersed at the same time that its tribal activities increased. The statistics presented on residential distribution during this decade, although a bit unclear, may account for 143 households. The petition states that there are 90 households of both Ortega and Ortiz lineages in the Valley, 20 that are out-of-state, and 33 households of the Ortega lineage that are in "Lancaster-Palmdale-Rosamond" (which is not within the San Fernando Valley). The statistics do not specifically reference the Garcia lineage group, but they do reference 10 households in the Santa Clarita area, which is close to Newhall, where the Garcia lineage was based. A total of 143 households seems like a large number of separate residences for a total enrollment of 266 (an average of 1.8 persons per household). This suggests that the individual families may be small, that there may be many non-members in member's households (non-member spouses and/or children, etc.), or that the statistics are wrong.

The petition documents two funerals that took place in the early 2000s that were attended by members of all three lineages, including the Garcia descendants (fr. 56-57). It also notes the affiliation of Garcia lineage members that live out-of-state (fr.57). The petition describes numerous tribal activities that did not take place or were not documented during the earlier decades. A group photograph of a 2000 event shows "about 80 tribal members" (fr. 57). There is more documented participation in native ceremonies and, cultural and religious site monitoring and more tribal involvement in health, education, and charity programs (fr. 58-59).

The petition indicates that until the early 2000s, the "boards of the band council" (the petitioner's governing body) and the Board of Directors of the non-profit organization (which included non-members of the petitioner and served the broader Indian community) were combined. Four of the nine board members of the separated non-profit organization, which became known as Pakúu Cultural Community Services in 2006, are not members of the petitioning entity (fr. 60). The petitioning entity adopted a new constitution in 2002. Prior to that date, the petition states that elections of tribal representatives were conducted in "quarterly family gatherings." Although the new constitution provides for formal elections and ballots, the petitioner still describes itself as a "coalition of autonomous lineages bound together by agreement and specific kinship and social relations" (fr. 68). It adds that the primary Ortega lineage has now "proliferated into several relatively autonomous lineages commonly known as the Verdugo, Tapia, Salazar, Ortega, and Newman families" (fr. 68).

**Comments on the Fernandeño Documentation for Categories of Evidence for Criterion 83.11(b), *Community*, 1952 through 2009**

**§ 83.11(b)(1)(i), Rates or patterns of marriage within the group, and/or, as may be culturally required, patterned out-marriages.**

The petition notes that lineage exogamy continued to be the practice, but that “a couple of members of the Ortiz and Ortega lineages married” (fr. 67). One couple is not a significant rate or pattern.

**§ 87.11(b)(ii), Social relationships connecting individual tribal members.**

The evidence presented for this period strongly suggests that the petitioner was not a functioning organic tribal entity whose members knew each other and their historical continuity and collective identity until long after Rudy Ortega, Sr., began researching the family genealogies in the early 1940s and then began efforts to organize Fernandño descendants into a social club in the mid-1950s. Rudy Sr. was not trying to reorganize a continuing tribal entity. Rather, he was recruiting members for an Indian descendance group, in part to pursue claims.

The petition repeatedly stresses kinship ties between the three family lines, but these ties are in most cases built on marriages in the 19<sup>th</sup> century and not on expanding connections.

The petitioner’s evidence on residential proximity from the 1950s through the 1990s indicates that there was a core group of members in or around San Fernando that lived in close enough proximity to maintain social relationships and informal social interaction and that there was increasingly more entity activities that may have drawn outlying members into social relationships. However, the petition does not present good evidence regarding the specific families involved and their actual participation level. It fails until the late 1990s to present specific evidence that significant social relations also encompassed one of its three lineage families, the Garcias. Although the membership is more dispersed in the 2000s there are more documented tribal activities that demonstrate significant social relations between all three family lineages and their sub-lineages. If the petitioner can produce more evidence of family interaction that also includes the Garcia line, it might be able to meet this category of evidence from the mid-1950s

on. With its present evidence, however, it only approaches meeting this category since 1999.

**§ 83.11(b)(1)(iii), Rates of informal social interaction that exist broadly among members of the entity.**

As with significant social relationships, the petitioner's evidence on residential proximity from the 1950s through the 1990s indicates that there was a core group of members in or around San Fernando that lived in close enough proximity to maintain informal social interaction and that there was increasingly more entity activities that may have drawn outlying members into informal social interaction. However, the petition does not present good evidence regarding the specific families involved and their actual level of interaction and especially for the Garcias, one of its three lineage families. Although there are more documented tribal activities in the 2000s, the membership is more dispersed and the petitioner has not demonstrated that informal social interaction existed broadly among all three family lineages.

**§ 83.11(b)(1)(iv), Shared or cooperative labor or other economic activity among members.**

The petitioner has not established that there was any shared labor or other shared economic activities among its members during this period.

**§ 83.11(b)(1)(v), Strong patterns of discrimination or other social distinctions by non-members.**

Unlike in the period from the 1920s until 1951, the petitioner does not make a case for specific discrimination or strong social distinctions during this period.

**§ 83.11(b)(1)(vi), Shared sacred or secular ritual activity.**

The petition again tries to meet this category of evidence by stating that most entity members were nominal Catholics and practiced Catholic rituals such as baptisms, godparenting, and weddings (fr. 32). However, it provides no specific

examples of baptisms, godparenting, or weddings, and it indicates that members “have branched to other Christian denominations” (fr. 69-70). Catholic participation was not tied to a specific church, but took place in many different churches. The petition documents that more native ritual activity has taken place in recent decades, including the observance of solstices and equinoxes and the singing of creation story songs (bird songs), but it fails to establish that these ritual activities were shared broadly because it has not enumerated the members participating in these rituals

**§ 83.11(b)(1)(vii), Cultural patterns shared among a significant portion of the group that are different from those of non-Indian populations with whom it interacts. These patterns must function as more than a symbolic identification of the group as Indian. They may include, but not be limited to, language, kinship organization, religious beliefs and practices, or ceremonies.**

The petition fails to establish that language was a distinct cultural pattern during this period. It could have asserted that it has distinct kinship organization based on its claim that the family lineages were autonomous and made their own social and political decisions, but it did not do so (fr. 69). All members allegedly shared this cultural pattern, but few, if any, examples are given of how this worked specifically. This evidence might help the petitioner meet this category of evidence, but it may hurt its claim of being a tribal entity. The petition notes that there is now more participation in native dances and public performances, but it fails to demonstrate that these activities are shared among a broad portion of its membership, stating only that they involve many of the younger band members (fr. 69).

**§ 83.11(b)(1)(viii), The persistence of a collective identity continuously over a period of more than 50 years notwithstanding any absence of or changes in name.**

The petitioner meets this category of evidence. In the 1950s it adopted the tribal name of the San Fernando Mission Indians and in 1976 it changed that name to the Fernandeano Tataviam Band of Mission Indians.

**§ 83.11(b)(1)(ix), Land set aside by a State for the petitioner, or collective ancestors of the petitioner, that was actively used by the community for that time period.**

The petitioner has not submitted documentation regarding this new category of evidence in the 2015 regulations.

**§ 83.11(b)(1)(x), Children of members from a geographic area were placed in Indian boarding schools or other Indian educational institutions, to the extent that supporting evidence documents the community claimed.**

The petitioner has not submitted documentation regarding this new category of evidence in the 2015 regulations.

**§ 83.11(b)(xi), A demonstration of political influence under the criterion in § 83.11(c)(1) will be evidence for demonstrating distinct community for that same time period.**

The petition does not claim that it meets this category of evidence for this period (fr. 69), although it has more evidence for political influence or authority than is demonstrated in any other period since the closing of the San Fernando Mission in 1846.

**Section 83.11(b)(2), High Evidence: The petitioner will be considered to have provided more than sufficient evidence to demonstrate distinct community and political authority under § 83.11(c) at a given point in time if the evidence demonstrates any one of the following:**

**§ 83.11(b)(2)(i), More than 50 percent of the members reside in a geographical area exclusively or almost exclusively composed of members of the entity, and the balance of the entity maintains consistent interaction with some residing in that area.**

The petition does a much better job of documenting residential proximity during this period than it does in any other period since 1846. It claims that the majority of members lived "in or near San Fernando" (fr. 70). However, it again misses the point that this was not a geographical area that was exclusive or almost exclusive to members of the petitioning entity. To meet this category of evidence a petitioner must demonstrate that the majority of its members are concentrated in a geographical area where there are little or no non-members. The Shinnecock and Pamunkey petitioners met this category for certain periods because their members were concentrated on State reservations in New York and Virginia, respectively. The Mashpee petitioner met this category of evidence by demonstrating that from colonial times up through the 1960s the vast majority of its members made up the almost exclusive population of the town of Mashpee, Massachusetts.

**§ 83.11(b)(2)(ii), At least 50 percent of the of the members of the entity were married to other members of the entity.**

The petition does not claim that it meets this category of High Evidence for this period (fr. 70).

**§ 83.11(b)(2)(iii), At least 50 percent of the entity members maintain distinct cultural patterns such as, but not limited to, language, kinship system, religious beliefs and practices, or ceremonies.**

The petitioner claims that it meets this category of evidence based on language (Spanish) and religious beliefs and patterns (Catholicism and, more recently, native rituals) (fr. 70), but, as noted above, it does not meet even the minimal standard for distinct cultural patterns set forth in 83.11(b)(1)(vii) for this period. It has not demonstrated that at least 50 percent of its membership maintained distinct cultural patterns because it has not enumerated either its total

membership prior to 2009 or the percentage of the total membership that maintained the distinct cultural patterns it claims.

**§ 83.11(b)(2)(iv), There are distinct community social institutions encompassing most of the members, such as kinship organizations, formal or informal economic cooperation, or religious organizations.**

The petitioner claims that it meets this category of evidence based on “long standing social, political, and kinship relations” (fr. 70). However, it misses the point that relationships between families are not community social institutions. Successful petitioners, such as the Narragansett and Mohegan in New England, that have evinced community institutions have demonstrated that involvement in a single church, a church organization, and/or a burial ground or cemetery encompassed most of their members. The Fernandeano petitioner has not demonstrated that it has any distinct community kinship, economic, or religious institutions.

**§ 83.11(b)(2)(v), The petitioner has met the criterion in § 83.11(c) using evidence described in § 83.11(c)(2) (see below).**

The petitioner has not claimed to meet this category of High Evidence and these comments have found that it does not meet any of the categories of High Evidence for political influence or authority in § 83.11(c)(2).

**Conclusions for Criterion 83.11(b), *Community*, 1952 through 2015**

The petitioner meets 83.11(b)(1)(viii) for this period, having demonstrated a collective Indian identity for more than 50 years. It might meet 83.11(b)(1)(vii), distinct cultural patterns, if it made an argument that the autonomous family lineages constitute a distinct cultural pattern (which it does not do in the present petition). To support this argument, it would need to provide more specific examples of how the separate family lineages made social and political decisions.

The petitioner might meet 87.11(b)(ii), significant social relationships, and 87.11(b)(iii), informal social interaction, since the mid-1950s if it presents more specific evidence regarding the relationships and interaction both between the core group families in and near San Fernando and between those families and the outlying families, including the Garcia lineage group. At present, the petitioner only has good documentation for meeting these categories of evidence since about 1999.

Although the petitioner's evidence for community during this period fails to document the social interaction of members of Garcia lineage prior to 1999, its evidence for political influence and authority (criterion 83.11(c)) evinces the political participation of at least some members of the Garcia family in the entity organized by Rudy Ortega, Sr., as early as the 1950s (see below). Conversely, the political participation of Ortiz family members during these years is not well documented in the petition, although there is better evidence of its social interaction. While it can reasonably be assumed that political participation also involved social interaction, neither is adequately established for all three family lineages in the petitioner's existing evidence.

The Acknowledgment regulations require that a petitioner must meet a combination of categories of evidence for criterion 83.11(b). The Fernandeano petitioner appears to only meet the community criterion based on a combination of evidence since about 1999. However, its present evidence does not meet criterion 83.11(b) for the 46-year period from 1952 through 1998.

**Criterion 83.11(b), *Community*, 2010-2015**

Even though the petitioner chose to be evaluated under the 2015 regulations and submitted a supplement to its documented petition in

2015, it has not presented any substantially new evidence or arguments for meeting the community criterion during this period. The supplement merely elaborates on the continuing activities of the petitioner's non-profit organization, now known as Pukúu (pp. 31-33).

**Overall Conclusions for Criterion 83.11(b), *Community*, 1789-2015**

Because the Fernandeano petitioner submitted its documented petition under the 1994 regulations, it presented evidence for the community criterion going back to 1789 and before. The evidence for the period 1797 through 1846 is much stronger than any subsequent period because it is based primarily on residential proximity in the distinct community of the San Fernando Mission. There is little question that the petitioner would have been found to meet criterion 83.7(b) for this period if it chose to be evaluated under the 1994 regulations because of its more than adequate and sometimes High evidence demonstrating distinct social institutions, significant social relations, informal social interaction, shared or cooperative labor, social distinction, shared ritual activity, distinct cultural patterns, and having a named collective identity for more than 50 years.

Following the Mexican government's sale of the San Fernando Mission land and resources in 1846, and in many cases before that date, the Fernandeanos dispersed to other scattered locations and lost much of the social, cultural, and political cohesion they had maintained at the Mission. If evaluated under the 1994 regulations, it appears likely that the petitioner would have been found to approach meeting only one category of evidence for community during the span of years from 1847 through 1885 and that is having "a named, collective Indian identity continuously over a period of more than 50 years." Although it might have technically met this category, as noted above its ancestors represented only a very small number of the Indians that shared this collective identity and later

evidence in the petition suggests that at some point members may have lost their collective identity.

Again because the Fernandefio entity initially petitioned under the 1994 regulations it also presented community evidence for the period 1886 through 1899. Due to the fact that it subsequently chose to be evaluated under the 2015 regulations, its evidence prior to 1900 will have little or no relevance in determining if it meets criterion 83.11(b). For the period from 1886 through 1951, the petitioner's present evidence may, with two important caveats, meet two categories of evidence for community during certain years of this time span. The categories are (1) having "evidence of strong patterns of discrimination or other social distinctions by non-members" (§ 83.11(b)(1)(v)) and (2) having a collective Indian identity continuously over a period of more than 50 years" (§ 83.11(b)(viii)). The limits of the evidence are that (1) specific information about discrimination and social distinctions only covers the period from the 1920s to 1952 and (2), as already noted, the petitioner's ancestors represented only a very small number of the Indians that shared the collective identity of being San Fernando Mission Indians or Fernandefios. The evidence in the petition suggests that at some point members may have lost their collective identity (not knowing they were Indian and/or not knowing their tribal affiliation). The Acknowledgment regulations provide that a petitioner must meet a combination of categories of evidence for criterion 83.11(b). However, the combination of somewhat minimal positive evidence for § 83.11(b)(1)(v) and (viii) for some years is insufficient proof to carry the case for this entire required period from 1900 through 1951 due to the absence of strong evidence of significant social relations and informal social interaction.

For the period from 1952 through 2009 the petitioner meets § 83.11(b)(1)(viii) for

this period having demonstrated a collective Indian identity for more than 50 years. It might meet 83.11(b)(1)(vii), distinct cultural patterns, if it made an argument that the autonomous family lineages constitute a distinct cultural pattern (which it does not do in the present petition). It might also meet § 87.11(b)(ii), significant social relationships, and § 87.11(b)(iii), informal social interaction, since the mid-1950s if it presents more specific evidence regarding the relationships and interaction both between the core entity families in and near San Fernando and between those families and the outlying families, including the Garcia lineage group. At present, the petitioner only has good documentation for meeting these categories of evidence since about 1999.

As has been noted throughout these comments on the petitioner's evidence for criterion 83.11(b), the petitioner might meet § 83.11(b)(1)(vii), distinct cultural patterns, and perhaps even § 83.11(b)(2)(iii), High Evidence for distinct cultural patterns, if it made an argument that the autonomous family lineages constitute a distinct cultural pattern (which it does not do in the present petition). To support this argument, it would need to provide more specific examples of how the separate family lineages made social and political decisions.

In sum, the petitioner's present evidence appears to meet criterion 83.11(b), only for the years 1999 through 2015. It fails to adequately demonstrate the existence of a distinct tribal community in which there were significant social relationships for the period from 1900 through 1998. Therefore, the petitioner fails overall to meet criterion 83.11(b).

**Criterion 83.11(c), *Political Influence or Authority***Explanation of the Criterion and Its Requirements

This criterion reads as follows:

**c) *Political influence or authority.* The petitioner has maintained political influence or authority over its members as an autonomous entity from 1900 until the present. Political influence or authority means the entity uses a council, leadership, internal process, or other mechanism as a means of influencing or controlling the behavior of its members in significant respects, making decisions for the entity which substantially affect its members, and/or representing the entity in dealing with outsiders in matters of consequence. This process is to be understood flexibly in the context of the history, culture, and social organization of the entity.**

**(1) The petitioner may demonstrate that it meets this criterion by some combination of two or more of the following forms of evidence or by other evidence that the petitioner had political influence or authority over its members as an autonomous entity:**

**(i) The entity is able to mobilize significant numbers of members and significant resources from its members for entity purposes.**

**(ii) Many of the membership consider issues acted upon or actions taken by entity leaders or governing bodies to be of importance.**

**(iii) There is widespread knowledge, communication, or involvement in political processes by many of the entity's members.**

**(iv) The entity meets the criterion in § 83.11(b) at greater than or equal to the percentages set forth under § 83.11(b)(2).**

**(v) There are internal conflicts that show controversy over valued entity goals, properties, policies, processes, or decisions.**

**(vi) The government of a federally recognized Indian tribe has a significant relationship with the leaders or the governing body of the petitioner.**

**(vii) Land set aside by a State for petitioner, or collective ancestors of the petitioner, that is actively used for that time period.**

**(viii) There is a continuous line of entity leaders and a means of selection or acquiescence by a significant number of the entity's members.**

**Section 83.11(c)(2), High Evidence: A petitioning group shall be considered to have provided sufficient evidence to demonstrate the exercise of political influence or authority at a given point in time by demonstrating that group leaders and/or other mechanisms exist or existed which**

**The petitioner will be considered to have provided sufficient evidence of political influence or authority at a given point in time if the evidence demonstrates any one of the following:**

**(i) Entity leaders or other internal mechanisms exist or existed that:**

**(A) Allocate entity resources such as land, residence rights, and the like on a consistent basis;**

**(B) Settle disputes between members or subgroups by mediation or other means on a regular basis;**

**(C) Exert strong influence on the behavior of individual members, such as the establishment or maintenance of norms or the enforcement of sanctions to direct or control behavior;**  
**or**

**(D) Organize or influence economic subsistence activities among the members, including shared or cooperative labor.**

**(ii) The petitioner has met the requirements in § 83.11(b)(2) at a given time.**

This criterion requires that a petitioner must have maintained the political characteristics of a tribal entity throughout time since 1900. A tribal entity that would have its government-to-government relationship “acknowledged” by the DOI must show that it has existed as a separate political body that exercises political influence or authority over its membership. The leadership measured can be both formal, such as a tribal council with a constitution, and/or informal, such as any tribal member who is able to influence the behavior of other tribal members beyond their own family.

**Comments on the Fernandño Evidence for Criterion (c), *Political Influence or Authority*, 1789 through 1951**

*Political Influence or Authority, 1797 through 1846*

The petitioner’s evidence for political influence or authority was presented in its Disc File 2009.9 Nov.d.pdf., although much evidence for this criterion is included under the portions of the 2009 documented petition dealing with criterion (b), community in its Disc Files 2009.9 Nov.b.pdf. and 2009.9 Nov.c.pdf. In these comments, references to the petition narrative are cited to the image frame (abbreviated fr.) in the disk file rather than to the page numbers as they appear on the copy of the 2009 narrative that OFA has posted on its website. Because the Fernandño petitioner submitted its documented petition under the 1994 regulations, it presented evidence for the political influence or authority criterion going back to 1789 and before. Although the petitioner elected to be evaluated under the 2015 regulations and submitted a 28-page evidentiary supplement for criterion (c) in 2015, that supplement also addressed mandatory criterion 83.7(c), the political influence or authority criterion under the 1994 regulations. Much of the information provided in this supplement deals with the period prior to 1900. While this information provides further historical background and context for the petition, it does not present evidence that is relevant to the OFA’s eventual evaluation because the 2015 regulations specify that the evaluation period for

criterion 83.11(c), political influence or authority, begins in 1900. However, the petitioner's 2015 supplement for criterion 83.7(c) did present relevant new information regarding political leadership within the primary lineage groups since 1900, which these comments shall address.

Because the petitioner presented High Evidence for community during the period 1789 through 1946, based on residential proximity at the San Fernando Mission, it likely would have been found to meet the political influence or authority criterion for this period if evaluated under the 1994 regulations. Sections 83.7(b)(2) and 83.7(c)(3) of those regulations permitted strong evidence of community to also meet the political influence or authority criterion during the same period covered by the strong evidence of community.

*Political Influence or Authority, 1847 through 1904*

For the period 1847 through 1904, the Fernandeano petitioner's documentation does not come close to meeting any of the categories of evidence specified in 83.7(c) of the 1994 regulations. After the closure of the Mission in 1846, the three lineage groups claimed by the petitioner (a small percentage of the total Fernandeano population) became spread out in communities at San Fernando, Newhall, Rancho Tejon, and Oxnard and Ventura in Ventura County. While the burden of the criterion is to demonstrate that the three lineages continued to be a politically interactive tribal entity after dispersal, the 2009 documented petition and the 2015 supplement both claim that each community where its ancestors resided was politically autonomous and made its own social and economic decisions and that each lineage group had its own leaders. This brings into question how the three remnant lineage groups can qualify as a tribal entity if they had no overarching political, cultural, economic, or social organization or leadership. The petitioner has provided the OFA with a list of leaders, but it is not known if that list included leaders of the lineage families for this period.

The petitioner establishes that Rogerio Rocha was the recognized captain of the remaining Fernandefios in the San Fernando village (1852-1904) (fr. 21). The 2015 supplement for criterion 83.7(c) describes more fully what that title meant in the post-Mission era (pp. 4-5). The documented petition states "many Mission Indians benefited from the legal and publicity efforts of Rogerio Rocha in trying to gain land and financial support from the Federal Government (fr. 22), but it does not provide any specific examples of his political influence or authority over the autonomous lineage families that lived outside of San Fernando. The petitioner's 2015 supplement for criterion 83.7(c) states that:

In the 1928 California Indian Roll applications, the Garcia family recognized Rogerio Rocha as captain of San Fernando, but the Ortiz family did not, preferring their own ancestor, who was Jose Miguel (Triunfo), although the family did not remember his name more than 75 years after his death in 1851. The Ortegas did not apply for the 1928 roll, but the Ortegas do not share direct lineal connection with Rocha (p.13).

Rocha was granted a ten-acre farm near the San Fernando village, from which he was evicted in 1885. Prior to that time, he shared his land and water with other Fernandefios. The petition does not establish that these resources were shared broadly by all the lineage families. Although Rocha had social ties with the Ortega and Ortiz families and kinship ties with the Garcia lineage group, he has no descendants in the petitioning entity. The petition identifies two other possible lineage captains during this period, Maria Rita Alipas at Encino, and Jose Miguel Triunfo at Rancho Cahuenga and elsewhere, but both of these leaders died prior to the 1870s (fr. 23).

The petition provides some examples of leaders who might have shared their land and water with some unspecified number of entity member up to 1885, but it does provide any evidence that significant resources were mobilized for the purposes or benefits of the petitioning entity as a whole. Neither does it evince

that a significant number of the petitioner's ancestors were mobilized for any entity purpose during this period. The documentation indicates that Rogerio Rocha took actions in an effort to obtain land and financial assistance from the Federal Government and that he succeeded in getting assistance for himself (fr. 22). It provides no specific evidence, however, that the petitioner's membership at that time considered his actions or that of any other entity leaders to be of importance. As is a problem throughout the petition until the present time, what constituted the majority or "most" of the membership cannot be determined because the total membership is not enumerated during this period.

The petitioner claims "members of the lineage participated in the political process of the lineage through consensual decision making within lineages and families, usually during family gatherings or informal meetings" (fr. 24). However, the petition cites no specific documentation that corroborates that the family lineages operated in that fashion. Likewise, it provides no examples of family or lineage meetings or gatherings or issues that were widely known and discussed or that provoked involvement in a political process during this period.

The petitioner claims "captain Rogerio Rocha shared water resources among the lineages" (fr. 24). The petition does not specifically identify the families with which Rocha may have shared his water resources. These resources belonged to him and not the entity, so he was not allocating an entity resource. Since Rocha had no land or water to share after 1885, his sharing was not on a consistent basis over the course of this period.

The petitioner claims that "families mediated internal affairs" (fr. 25), yet the petition provides no specific examples of any disputes that were settled by entity leaders or families. It also claims that "group leaders enforced rules ... and for some infractions, such as incest within the lineage, persons were put to death by shooting them with arrows" (fr. 25). In addition, it asserts that lineage leaders

“continued to enforce the rule of exogamy” (fr. 25). However, the petition provides no specific examples of enforcement of exogamy or any other rule or norm or of violators being condemned to death.

The petitioner claims that “group leaders organized labor on their ranches and farms as long as they held land” (fr. 25). The petition states that entity leaders shared their land and water resources, but it provides no specific examples of leaders organizing or influencing subsistence activities by members, such as planting, harvesting or gathering. The petition does not specifically identify the families with which entity leaders shared their resources. After 1885, entity leaders had no resources to share.

*Political Influence or Authority, 1905 through 1951*

The 2015 revised regulations shortened the evaluation period for criterion (c) political influence or authority, moving the starting date from 1789 to 1900. As with the community criterion, this change is a mixed blessing for the Fernandño petitioner. On the one hand, it eliminates a period for which it appears to have virtually no evidence for political influence or authority, 1847 through 1899. On the other hand, it also erases the need to meet the criterion during a period for which the petitioner appears to have strong evidence of political influence or authority based on residential proximity within the San Fernando Mission community, 1789 through 1846.

The 2015 supplement for criterion 83.7(c) also maintains that the “San Fernando Indian community became a *coalition of lineage communities*” (p. 18). It provides more details about political leadership among the petitioner’s three primary lineage groups in the 20<sup>th</sup> century but not much evidence of the political interaction of these groups within a larger Fernandño tribal entity.

Following the death of Rogerio Rocha in 1904, the petition maintains that Antonio Maria Ortega (of the Ortega lineage group) became the captain of the Fernandinos in 1910 and served in that capacity until 1941 (fr. 26-27). The assertion that Antonio was a "captain" appears to be based solely on the oral history statements of his grandson, Rudy Ortega, Sr., who was told by his father Estanislao Ortega that Antonio "was in charge of the tribe" (fr. 26, fn. 78). The petition presents little, if any, evidence of what Antonio Ortega did to provide leadership or documentation to evince that he had political influence or authority over all three of the lineage families. In addressing criterion 83.7(b), the petition established that Antonio was mentally challenged by the mid-1930s (Disc File 2009.9.Nov.c.pdf, fr. 8).

The single political issue focused on during this period was whether entity members should apply for the California Judgment Act roll (the roll created by the California Indian Jurisdictional Act of 1928). Some families favored enrollment, but Antonio argued against it out of fear that the people would be removed to a reservation. He allegedly influenced all of the Ortega lineage members not to enroll, but members of the Ortiz lineage did apply. The petition documents that this issue also involved Josephine (Leyva Garcia Gardner) Gutierrez and Vera Ortega Salazar, who opposed enrollment, and Erolinda (Refugia) Tapia, Christina Ortega Rodriguez, and Joseph Ortiz, who favored registration (fr. 27-29). In the end, the petition concludes, "the community decided to allow any one or any family to enroll if they wished" (fr. 29). While several of the oral history interviews document that this was an issue, none of them corroborate that it was resolved by a decision of the broad community (fr. 27-29).

Although the petition narrative repeatedly presents the 1928-1933 registration as a key political issue, it provides no specific examples of meetings or other gatherings in which the issue was discussed by all three of the lineage families together. While the issue may evince the political influence of Ortega family

leaders within their own line, it does not demonstrate their political influence over a broader tribal group, because they did not influence the decision of those outside their family who chose to enroll.

The petition again argues that each community where its ancestors resided was politically autonomous and made its own social and economic decisions by consensus, and that each lineage group had its own leaders (fr. 26, 28). The petitioner has provided the OFA with a list of leaders, but it is not known if that list includes leaders of the lineage families for this period other than those individuals named as being involved in the 1928-1933 registration issue.

Following the death of Antonio Maria Ortega in 1941, the petition states that his eldest son Estanislao became the captain of the Fernandefios until his own death in 1951 (fr. 29). The petition indicates that Estanislao Ortega visited families throughout the San Fernando Valley and "raised funds, gathered funds for tribal funerals, organized family gatherings, held festivals, and meetings among the families" (fr. 30). In addition, he "collected and distributed food for elderly community members" (fr. 30). These statements appear to be based primarily on the oral history testimony of Estanislao's daughter (fr. 29, fn. 89) and son (Rudy, Sr.), (fr. 30, fn. 90-91). The daughter stated that she learned that her father was a "chief" from one of her brothers and that the "family" got together for weddings, funerals, and dinner parties (Fr. 30, fn. 90). These interviews, at least as quoted in the petition narrative, provide little or no description of specific events and fail to establish that these activities encompassed all three of the petitioner's lineage families (Ortega, Ortiz, and Garcia).

An interviewer asked his daughter if Estanislao did "anything with the family and community that would have been in the role or the position of leadership? Did he get people together? Did you have any events together? She replied, "not that I am aware of" (fr. 31, fn. 95). When asked if the community had meetings, son

Rudy Sr., stated: "they had festivals. They had meetings. But I don't know when their meetings were. I was too small" (fr. 31, ftn. 93). Later in the narrative, Rudy Sr. states that "before the war" (World War II) he became "the leader of the organization" (a kind of social club of descendants) (fr. 31-32). If his father was the captain of the petitioning entity from 1941 to 1951, Rudy Sr. should have known where community meetings were held and what was discussed. This provides an example of how the interviews fail to distinguish the extent to which the cited activities also involved the larger group of Fernandinos and other Indians and/or the general San Fernando community, including non-Indians, as opposed to just the petitioner's three claimed lineages. When asked for whom his father provided food assistance, Rudy Sr. replied, "They were families. But I don't know if they were Indian or not..." (fr. 31, ftn. 92).

The petition maintains that Estanislao "continued to hold his father's position that the Ortega lineage should not register in the 1928 roll. Accordingly, they did not take part in the 1950 roll update" (fr. 31).<sup>2</sup> The source cited for this information does not make reference to either roll (fr. 31, ftn. 93). Estanislao's daughter stated in an interview that her father did not register but that her aunts did (fr. 31, ftn. 95), which contradicts the notion that he influenced the Ortega lineage to not

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<sup>2</sup> It is not certain what the petitioner specifically means by "the 1950 update." An Act of June 30, 1948 (62 Stat. 1166) called for a revised roll of California Indians. It provided for the enrollment of children or their descendants, then living, born since May 18, 1928 to enrollees whose names appeared on the roll of the Indians of California approved on May 17, 1933 (the roll created by the California Indian Authorization Act of 1928). The act also authorized the removal of names of 1933 enrollees who had since died. This 1948 roll was approved November 23, 1951. The Act of May 24, 1950 (64 Stat. 189) authorized one per capita payment of \$150 to each person enrolled on the roll of California Indians and living on May 24, 1950 or then eligible for enrollment. It also expanded the eligibility criteria for the revised roll. The 1950 Act created a deadline date of May 23, 1951 for accepting applications. The time allotted was insufficient and the roll presented in accordance with the law was only a partial list of those eligible. The Act approved June 8, 1954 (68 Stat. 240) authorized the completion of the roll, giving the Secretary of the Interior until June 30, 1955 to approve and promulgate the revised roll. The new law permitted adding to the roll the names of qualified persons whose applications were filed by May 23, 1951 and who were not included on the roll approved on November 23, 1951. The Secretary of the Interior approved the Revised Roll of California Indians on June 30, 1955. The roll was consolidated into a single alphabetical listing of the 36,094 names of persons who had been certified to the roll as of that date.

register.

In regard to his own leadership during this period, Rudy Sr. stated in an interview “before the war, when they made me the leader of the organization [a kind of descendant’s club], well, we actually didn’t have enough to say that we were Mission Indians yet. I was still working on the genealogy” (fr. 31-32). He then answered some very leading questions from the interviewer about the makeup of the organization. In response to the question “So these were people that always went to the festivals and always went to the events?” he replied “Yeah” (fr. 32). In answer to the question “And these were sort of leaders in their families and stuff?” he again replied “Yeah” (fr. 32). He stated that he held meetings twice a month at his home attended by over 20 of “my people” (fr. 32).

The petition states that Estanislao was increasing in bad health and that his illness left “a leadership vacuum during the late 1940s” (fr. 31). Rudy Sr. was in military service and absent from the community from 1941 to 1949. Estanislao died in 1951 and the organization that Rudy Sr. continued to work on after his return to San Fernando area adopted the name San Fernando Mission Indians in 1955.

**Comments on the Fernandeano Documentation for Categories of Evidence for Criterion 83.11(c), *Political Influence or Authority*, 1905 through 1951**

**§ 83.11(c)(1)(i), The entity is able to mobilize significant numbers of members and significant resources from its members for entity purposes.**

The petitioner claims that it meets this category of evidence because the community was mobilized “through family, community, and network contacts” (fr. 32). The petition asserts that families met for social events and to discuss issues and organized and prepared food for these gatherings. It also notes that families collected resources to help needy members and that “the captains

engaged in community and family networks to discuss issues, gain contributions, and communicate with family members" (fr. 32).

These claims go way beyond what is documented in the oral history interviews. The petition does not provide any specific examples of either family or community gatherings or issues that were discussed at such events. It likewise fails to evince that families collected resources for needy members. It only documents that Estanislao Ortega collected funds for those who needed assistance in San Fernando, which may have included non-Indians (fr. 30-31, ftn. 91-92). The petition describes only two captains, both in the same family, and the evidence of their holding that title is based primarily on the oral history testimony of their descendant Rudy Ortega, Sr. The petition neither describes nor documents a community "network" that encompassed all of the petitioner's three family lineages. Again, "significant numbers of members" cannot be determined because the total number of members is not enumerated for this period.

**§ 83.11(c)(1)(ii), Many of the membership considers issues acted upon or actions taken by entity leaders or governing bodies to be of importance.**

The petitioner claims that it meets this category of evidence because "the captains were engaged in issues that were of concern to the community" and their activity was based on group discussions" in gatherings of the autonomous family lineages. This is the political model that is presented throughout the narrative. The petition only documents two issues during this period, whether or not members should register for the roll authorized by the California Jurisdictional Act of 1928 and the "1950s roll update." The alleged captains, Antonio Maria Ortega and Estanislao Ortega, were opposed to registration because they feared that the Federal Government would relocate members to a reservation. Ortega and Garcia family members did not register for the roll authorized in 1928 but Ortiz family members did. The petition claims that all of

the Ortega family members followed the lead of Estanislao regarding the "1950s roll update" (fr. 33), but this is contradicted by the oral history testimony of his daughter.

The petition does not document any meetings or discussions on these issues or enumerate what percentage of the membership did not register for the rolls. Even if it is granted that these were issues of importance to most of the members during the periods of registration (1928-1933 and 1948-1951), it would only document political influence or authority for those points in time and not on a "substantially continuous" basis for the entire period. The "1950s update" registration continued for some California Indians until 1955.

**§ 83.11(c)(1)(iii), There is widespread knowledge, communication and involvement in political processes by many of the entity's members.**

The petitioner again claims that it meets this category of evidence because "members of the lineage participated in the political process of the lineage through consensual decision making within lineages and families, usually during family gatherings or informal meetings" (fr. 33). However, the petition cites no documentation that corroborates that the family lineages operated in that fashion. It provides no examples of family or lineage meetings or gatherings or issues that were both widely known and discussed or that provoked involvement in political processes during this period. Even if it had examples, they might not be adequate to determine that they involved "many" entity members because the total membership is not enumerated.

**§ 83.11(c)(1)(iv), The group entity meets the criterion in 83.11(b) at greater than or equal to the percentages set forth under § 83.11(b)(2).**

It appears that the petitioner does not meet criterion 83.11(b) during this period.

**§ 83.11(c)(1)(v), There are internal conflicts which show controversy over valued group goals, properties, policies, processes, or decisions.**

The petitioner claims that it meets this category of evidence because there were controversies regarding whether or not to register for the judgment rolls, and different families took different positions and actions (fr. 33). The petition does not clearly articulate any collective entity goals, policies, processes, or decisions regarding these controversies. No evidence is presented, for example, either that the entity as a whole had a goal or policy of not accepting the judgment funds and avoiding relocation to a reservation or that it made a decision through a political process to that effect that was opposed by some families. Neither is there any specific evidence that the three families actually interacted in a controversy over these issues. Even if it is granted that these were internal conflicts that showed controversies during the periods of registration (1928-1933 and 1948-1951), it would only document political influence or authority for those points in time and not on a substantially continuous basis for the entire period. The "1950s update" registration continued for some California Indians until 1955.

**§ 83.11(c)(1)(vi), The government of a federally recognized Indian tribe has a significant relationship with the leaders or the governing body of the petitioner.**

The petitioner has not submitted documentation regarding this new category of evidence in the 2015 regulations.

**§ 83.11(c)(1)(vii), Land set aside by a State for petitioner, or collective ancestors of the petitioner, that is actively used for that time period.**

The petitioner has not submitted documentation regarding this new category of evidence in the 2015 regulations.

**§ 83.11(c)(1)(viii), There is a continuous line of entity leaders and a means of selection or acquiescence by a significant number of the entity's members.**

The petitioner has not submitted documentation regarding this new category of evidence in the 2015 regulations. The 2009 documented petition indicates that it

has submitted a chronological list of leaders to the OFA. Sufficient information has not been submitted to determine if a significant number of members either selected or acquiesced to this leadership prior to recent times when leaders were formally elected. The petitioner might easily meet this new category of evidence if can provide more documentation enumerating how many members in each era either were involved in the selection of named leaders or accepted the leadership of the selected individuals.

**Section 83.11(c)(2), High Evidence: The petitioner will be considered to have provided sufficient evidence of political influence or authority at a given point in time if the evidence demonstrates any one of the following:**

**(i) Entity leaders or other internal mechanisms exist or existed that:**

**(A) Allocate entity resources such as land, residence rights, and the like on**

The petitioner claims to meet this category of High Evidence because "leaders and captains raised money for the needy" (fr. 34). The petition fails to establish that funds for charity constituted entity resources rather than just the personal resources of one leader, who likely distributed the funds to both members and non-members in San Fernando. It only documents that Estanislao Ortega carried out this activity over a limited period and not by the collective leaders of the petitioning entity on a "consistent basis" throughout this time span.

**§ 83.11(c)(2)(i)(B), Settle disputes between members or subgroups by mediation or other means on a regular basis.**

The petitioner does not claim that it meets this category of High Evidence for this period.

**§ 83.11(c)(2)(i)(C), Exert strong influence on the behavior of individual members, such as the establishment or maintenance of norms and the enforcement of sanctions to direct and control behavior.**

The petitioner claims that it meets this category of High Evidence because "lineages continued to enforce the rule of exogamy" and "leadership and

meeting patterns followed traditional forms and rules" (fr. 34). The petition provides no specific examples of enforcement of exogamy or any other rule or norm that exerted "strong influence on the behavior of individual members.

**§ 83.11(c)(2)(i)(D), Organize or influence economic subsistence activities among members, including shared or cooperative labor.**

The petitioner does not claim that it meets this category of High Evidence for this period.

**§ 83.11(c)(2)(ii), The petitioner has met the requirements in § 83.11(b)(2) at a given time.**

The petitioner claims that it meets this category of High Evidence because it has demonstrated High Evidence for maintaining social relations within a community (fr. 34). However, as indicated above, the petitioner does not appear to be able to meet even the minimal evidence for criterion 83.11(b) during this period.

**Conclusions for Criterion 83.11(c), *Political influence or Authority, 1905 through 1951***

The petition documents several entity members that may have had political influence or authority during this period, including Antonio Maria Ortega and Estanislao Ortega, who are identified as "captains," and Rudy Ortega, Sr., Vera Ortega Salazar, Josephine Gutierrez (Garcia), Erolinda (Refugia) Tapia, Christina Ortega Rodriguez, and Joseph Ortiz. However, it fails to demonstrate that any of these individuals had broad influence over the petitioner's ancestors rather than just within their separate family lineages. No evidence is presented that a political relationship existed between named leaders and entity members as a whole, meaning that the leaders had followers they influenced throughout the membership, that leaders were in turn influenced by followers outside of their families in significant ways, or that the petitioning entity as a whole was able to make significant decisions and maintain a consensus among its members. There is a great lack of description of specific entity meetings or gatherings and

of any broad entity goals, policies, political processes, decisions, or resources.

The petition presents some evidence of political issues of importance and controversy surrounding whether or not to register for the California judgment roll authorized in 1928 and the "1950s update" of that roll. However, even if it is granted that these were issues of importance to most of the members during the periods of registration (1928-1933 and 1948-1951) and represented internal conflicts that showed controversy (and the evidence is minimal at best), they would only document political influence or authority for those points in time (perhaps a total of up to 8 years) and not on a substantially continuous basis for the entire 46-year period. The "1950s update" registration continued for some California Indians until 1955.

The petitioner fails to meet criterion 83.11(c), political influence or authority, from 1905 to 1951 because its documentation does not adequately meet any of the separate categories of evidence for this criterion.

**Criterion 83.11(c), *Political Influence or Authority*, 1952 through 2015**

The petition states that following the death of Estanislao Ortega in 1951, his eldest son Rudy Ortega, Sr., became the "captain of the San Fernando Indian lineages" (Disc File 2009.9.Nov.d.pdf, fr. 36). This statement, which is again based solely on the oral history testimony of Rudy Sr., is unclear as to whether this is a claimed leadership of all the San Fernando Mission lineages or just the three lineages claimed by the petitioner (see fr. 36, ftn. 98). As noted elsewhere in these comments, the petitioner's membership represents only a small portion of the people who could claim descent from the San Fernando Mission Indians. When asked in an interview the following questions: "How did you acquire the information about there being a chiefly lineage in your family?; How did you learn about that, because I understand you have inherited the chief role in your tribe?;

How did you inherit it?; From whom did you inherit it?; Rudy Sr. replied:

You know, I really don't know. I just took it and my people voted me to take it, to start doing the research on our people and to find our heritage and that was it. Then afterwards, about a couple years later, then they named me the chief of the tribe and gave me the name ...Chief Little Bear (fr. 43, ftn. 119).

The petition repeats the information that as a young man in the 1940s, Rudy Sr. began, with the urging of his aunt, Vera Ortega Salazar, to research family history and genealogy with the purpose of organizing a "cultural center" (fr. 37). Rudy Sr.'s oral history information indicates that he did not identify as Indian in school and that he was angry after a teacher identified him as Indian for participation in a drum group. When he told his mother, she said "well son, you are an Indian. When he then asked "what kind of Indian am I?" his mother replied "ask you dad, your dad should know." He recalled that his father told him "you're a San Fernando Mission Indian" (fr. 37). Another family informant indicated that Rudy Sr. "had a burning desire to know who he was, where they came from and get that family lineage" (Disc File 2009.9 Nov.c.pdf, fr. 15, ftn. 269). The petition indicates that Rudy researched the family histories and then "took on the task to gather the people together" (Disc File 2009.9 Nov.c.pdf, fr. 15).

After starting his initial efforts to organize a social club or cultural center before World War II, Rudy Sr. served in the Army for most of the 1940s (1941-49). In various oral history interviews, he described his organization efforts of the early 1950s:

But the community, no, they didn't start nothing up until I had my people come back after I got out of the service (fr. 38).

They were waiting for me.... my aunt says 'Rudy, let's form something, I need something to where I can go out and enjoy and talk to the people.' I said 'Okay.' So that's what we did. We formed a group and after the war, when I come back, they said, come on let's get the people. They're ready. They've been waiting for you to comeback. I says okay. So we started doing the meetings again

[referencing the meetings he organized in the early 1940s] (fr. 38, ftn. 105).

We never called ourselves any Mission Indians or nothing until later in time when we find out where exactly we were from. ...They weren't sure where they were from. They lived in San Fernando but they weren't particularly sure whether they were from here or from over there. Until after when I started doing everything and started giving them information (fr. 39).

So I started getting the people together and after we got the people together, we said, well, what are we going to call it? I said, well, that's up to you people what you want to call yourselves. Don't forget we were born here in San Fernando and we came from the San Fernando Mission so chose the name what you want to be called. He said, how about San Fernando Band of Mission Indians? I says that's fine, because I heard that they used to call us the San Fernando Mission Band Indians but then they took the Band out and they said San Fernando Mission Indians after that. So I says, okay fine, so that's what we started on. So my aunt [Vera Ortega Salazar] said, well let's do something on the club. So we started, I said, lets see what we can do? First, he says, we've got to find out if we are Indians or not. Oh, I said, here we go, I know what you are trying to say. None of my people want to do anything, they want everything on a silver platter, so I said, let's get all the people together and let's talk it over and we'll go down to the park and we'll talk it over and see what happens this summer. Okay, so that's what we did, we went over and a lot of people didn't want to do nothing. Oh no, it's too hard to do anything. What about Rudy? Well, if that's the case you're going to leave me holding the bag, then I'll go ahead and do it then, I'll try. I don't know a thing about archeologist, genealogist, but I'll see what I can find about our ancestors. Okay, so they were all happy about that. At that time, they came out news in the paper that they were going to give some money out to the tribes if they could prove they were native Americans. So, they says, come on, Rudy, let's hurry up and see if we can get some money (Disc File 2009.9 Nov.c.pdf, fr. 14-14, ftn. 267).

In an interview cited earlier in the petition, Rudy Sr. states that the organization was formed in the "middle of the fifties." "I was just thinking of trying to get the people together," he states, "and do some fun things together" (Disc File 2009.9 Nov.c.pdf fr. 38, ftn. 337). Another informant when asked when he or she first

started "hearing the name Tataviam," answered "when Rudy made us aware and he made us all sign these roll papers back then" (Disc File 2009.9 Nov.c.pdf, fr. 37, fn. 325).

This evidence strongly suggests the absence of a functioning organic tribal entity whose members knew each other and their historical continuity and had significant social relations and an interactive political relationship with recognized leaders prior to the mid-1950s. The evidence indicates that Rudy Ortega, Sr., the son of the claimed "captain" of the ancestors of the petitioning entity, and perhaps his mother, did not know what kind of Indian he was and apparently did not know related tribal members until he researched them in an effort to bring them together. They, in turn, did not know conclusively if they were San Fernando Mission Indians until he completed genealogical research that confirmed that they were. This evidence further indicates that the people involved did not have a collective identity as Indians or as a tribal entity and that they were not particularly inclined to organize. It also indicates that Rudy Sr. was trying to organize an Indian descendency or recruitment group rather than reorganizing a continuing tribal entity and that one of the incentives for organizing was the pursuit of claims.

According to the petition, the entity organized by Rudy Sr. adopted the name "San Fernando Mission Indians" during the middle 1950s and created a booth with a tribal banner that it took to the festivals of various tribes (Disc File 2009.9 Nov.c.pdf, fr. 45). The entity held monthly meetings and "discussed issues and problems within the community and made decisions by consensus" (Disc File 2009.9 Nov.c.pdf, fr. 40).<sup>3</sup> In reference perhaps to the 1950s, the petition states that "the Tapia, Salazar, Ortega, Verdugo, and Newman lineages were active

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<sup>3</sup> Oddly, this is just one of many examples where the information on political organization is better presented in the section of the documented petition dealing with criterion 83.7(b), community, during this period than it is in the section presenting evidence for criterion 83.7(c), political influence or authority since 1951.

and engaged in the community” (Disc File 2009.9 Nov.d.pdf, fr. 44). From elsewhere in the petition narrative, it can be gleaned that individuals with the Tapia, Salazar, Verdugo, and Newman surnames were related to the primary Ortega family (see. fr. 41 and 75).

Rudy Sr. was officially recognized as the tribal coordinator of the San Fernando Band of Mission Indians in 1967 (Disc File 2009.9 Nov.c.pdf, fr. 40). One of the activities he led was an effort to encourage eligible people to enroll for what became the California Indian Judgment Fund of 1972. However, the entity was still not formally organized. Rudy Sr. recalled that he was reluctant to head an organization because “I had enough work trying to get this genealogy to get it for '68 [the Judgment Fund applications] to get everything done,” but finally “almost at the seventies ... I said, Okay. Let's get the people” (Disc File 2009.9 Nov.d.pdf, fr. 45, fn. 127). He recalled further that:

When we had them at the Mission to give all the documents to everything [Judgment Fund applications], I says 'Everybody you want to have a group together? We'll have it.' They said, 'Yeah. Let's have a group together.' 'We'll meet where?' They said, 'Let's meet here at the Mission.' 'Okay.' So we started getting the people together. We started meeting at the Mission for a while. The wintertime came, then we started meeting them at the homes. But then I started, I went to the County in Pacoima, which is the Department of Social Services, and I have a friend ... anyway he gave us an office. He gave us a phone. We didn't have to pay for this service. And he gave us paper. He gave us a typewriter (fr. 45-46, fn. 127).

Rudy Sr.'s son Larry recalled that:

They called my father up and told him they wanted him to be a leader. So my father started putting things together, projects and all of that, and the next thing you know the organization just started growing with the family [emphasis added], and then we started getting people [to] say they were Indian. So it started building up that way .... (Disc File 2009.9 Nov.c.pdf, fr. 44).

Prior to the adoption of formal bylaws in the early 1970s, the petition states that

“the community conducted their monthly meetings by traditional procedures, discussing issues of concern until a consensus was reached and deferring to the chief” (Disc File 2009.9 Nov.c.pdf, fr. 46). This information is cited to an interview with Rudy Sr. (fr. 46, ftn, 129). Footnote 142 in Frame 48 confirms that the cited source, Document 80310.INT, is an interview with Rudy Ortega, Sr.

The petition claims that Mary Garcia of the Garcia lineage “was a close political confidant of Rudy Ortega, Sr., and actively participated in the community of the San Fernando Indians through the 1950s, 1960s, and 1970s (fr. 40). It states further that although Mary’s son Theodore became a member and officer in what became the Fernandño Band, she and her other descendants identified as Chumash and did not become Fernandño members (Disc File 2009.9 Nov.c.pdf, fr. 37).

The petition states further that Rudy Sr. was elected “chief or leader of the San Fernando Mission Indians” in the early 1970s (fr. 46). The source of this information is cited to an interview with a member related to the Garcia family, who indicated that his or her cousin Theodore Garcia was present at the election (fr. 46, fnt. 134). Other oral history evidence indicates that Theodore Garcia attended meetings of the entity in the 1950s and 1960s (fr. 40, ftn. 111). Another informant indicated that a “big meeting” was held in Newhall (perhaps in the late 1960s and likely about registration for the Indian Judgment Fund), where the informant’s cousins from the Garcia family are known to have resided (fr. 47, ftn. 136).

These interviews cited in the 2009 documented petition evince the political participation of at least some members of the Garcia family in the entity organized by Rudy Ortega, Sr., as early as the 1950s. However, the political participation of Ortiz family members is not well documented in the petition. In

reference to the early 1970s, the petition states that “members of both the Ortiz and Ortega lineages regularly engaged in ceremonies as well as meetings” (fr. 47). However, the source for this information is cited to an interview in which the informant only recalled that an Ortiz family member, Gloria Ortiz, was constantly involved in ceremonies. This informant makes no reference to meetings, although he or she was only a child at the time (fr. 47, fn. 137).

The petition claims that during the late 1960s Rudy Ortega, Sr., held political meetings and that many members of the Ortiz families applied for eligibility for the 1972 California Indian Judgment Fund as a result of his leadership (Disc File 2009.Nov 9.c.pdf, fr. 45). It also indicates that many members of the Ortega and Ortiz families lived in relatively close proximity in the 1950s (within 8.5 miles of old town San Fernando) (Disc File 2009.Nov 9.c.pdf, fr. 39) and that Ortiz family members attended the 1951 funeral of Estanislao Ortega, the petitioner’s claimed captain (Disc File 2009.Nov 9.c.pdf, fr. 20). It is reasonable to assume based on the limited evidence of social relations between the Ortiz and Ortega families (i.e., residential proximity and shared life events and ceremonies) that Ortiz family members also were involved in the political entity organized by Rudy Ortega, Sr., which adopted the formal name San Fernando Mission Indians in the mid-1950s. However, the actual political participation of Ortiz family members is only hinted at in the petition.

The petitioner’s 2015 supplement for criterion 83.7(c) presents more information about the participation of Garcia lineage leaders in the formal organization of the petitioning entity. It introduces Charlie Cooke to the narrative for the first time and describes how he was selected to be leader of the Garcia lineage group around Newhall in 1959. His biographer, Mary Louise Contini Gordon, however, described him in a 2013 publication as “chief of his Southern Chumash group” rather than as a political leader within a Fernandeano tribal entity (p. 24). He served in that role until 2008, at which time Ted Garcia, Jr., succeeded him.

Charlie Cooke passed away in 2013. The supplement points out that Ted Garcia, Jr., is an enrolled member of the petitioner but that another prominent Garcia family leader, whose name was redacted, is not (p. 25).

The 2015 supplement also identifies two Ortiz lineage elders, at least one of whom was active with the petitioner during the 1960s and 1970s, "who do not assume any political power" (p. 27). The supplement does not shed any further light on the political interaction of Ortiz family leaders with Ortega family leaders before that period, although many members of both families resided in San Fernando.

The evidence indicates that by the early 1970s, the petitioner had a leader in Rudy Ortega, Sr., allegedly chosen by some political process, a formal entity name, the San Fernando Mission Indians, political issues, including applying for the California Indian Judgment Fund, and at least nominal participation in political meetings by all three lineages (Ortega, Ortiz, and Garcia).

The petition maintains that "Rudy Ortega and community distributed "500 copies of the enrollment applications" for the California Judgment Act Fund of 1972 (Disc File 2009.9 Nov.d.pdf, fr. 49).<sup>4</sup> As this is a much larger number of people than would have comprised the petitioner's three lineage families during that period, this statement adds to the confusion at many points in the petition between what constituted the community and leadership of the three family lines now claimed by the petitioner and what constituted the community and leadership of the much broader and larger group of descendants of the Indians that had been gathered together at the San Fernando Mission. For example, the petition indicates that a newspaper article documented that the "San Fernando Indians" met in November 1971 at the Mary Immaculate Catholic

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<sup>4</sup> The petition states that "many members of the Ortiz, Ortega, Tapia, Newman, and Salazar families were enrolled in the 1972 roll", but it makes no reference to Garcia family members (Disc file 2009.9 Nov.d.pdf, fr, 50). Some Garcia family members had previously enrolled for the 1928 judgment fund.

Church in Pacoima (a community near San Fernando), to “install officers and discuss the California Indian Judgment Roll payment” (fr. 48).

Another example is the establishment of the San Fernando Inter-Tribal Club in Rudy Ortega’s home in San Fernando. The petition describes the “Rincon house” as being “the center for organization and government for the San Fernando Mission Indians” (Disc File 2009.9 Nov.c.pdf, fr. 45). In 1973, the Inter-Tribal Club was incorporated as San Fernando Valley Inter-Tribal Inc. (SFVITI) (fr. 45). While it is clear from descriptions that the non-profit was serving the broader community of Indians (essentially any needy Indian, see fr. 46), it is not clear if its governance also served that community or just the three family lines of the petitioner. The SFVITI charged membership dues, managed social and community support services, and sponsored cultural events. Rudy Sr. served as president, but its board consisted of “band members and non-band members” (fr. 46).

The petition states “for about three years the San Fernando Valley Inter-Tribal Inc. nonprofit served as the main organization of the San Fernando Mission Indians” (Disc File 2009.9 Nov.c.pdf, fr. 47). In 1976, the tribal government was organized under separate bylaws as the Fernandeno Band of Mission Indians (FBMI) (fr. 47 and Disc File 2009.9 Nov.c.pdf, fr. 50). These bylaws distinguished “members” from “registered members.” Registered members were those enrolled for the 1928, 1950, or 1972 judgment funds and only they had a right to vote or discuss tribal issues. The non-profit continued to have members who were not members of the FBMI (Disc File 2009.9 Nov.c.pdf, fr. 50-51). The petition states that throughout the 1970s and 1980s the “tribal community” was engaged in the protection of cultural resources, such as cave paintings, and sacred, historical, and burial sites (Disc File 2009.Nov 9.d.pdf, fr. 51)

The petitioner held many more social and political activities during the decade of the 1990s, and these events are better documented in sources such as newspaper accounts rather than just being dependent on information provided by informants in oral history interviews. The petition describes ceremonial activities, cultural demonstrations, fundraising events, and the existence of a council of elders (Disc File 2009.Nov 9.c.pdf, fr. 53). In 1995, the petitioner requested its members to more formally register for membership, including submission of ancestry charts, and a more accurate and extensive tribal roll was developed (Disc File 2009.Nov 9.d.pdf, fr. 51). The petition states that the entity held powwows until 1998 and that it established a newsletter (Disc File 2009.Nov 9.c.pdf fr. 52).

In April 1995, the Band submitted a letter of intent to the DOI to petition for Federal acknowledgment. In January 1996, it requested Technical Assistance (TA) from the OFA in documenting an acknowledgment petition. The OFA subsequently sent it a TA letter (Disc File 2009.Nov 9.a.pdf, fr. 1).

For the early 2000s, the petition describes numerous tribal activities that did not take place or were not documented during the earlier decades. There is much more documented participation in native ceremonies, as well as cultural and religious site monitoring and more tribal involvement in health, education, and charity programs (Disc File 2009.Nov 9.c.pdf, fr. 58-59). The petitioning entity adopted a new constitution in 2002. This governing document established a Tribal Senate as the governing body of the Band. It split the formerly combined boards into two separate entities: the Band's governing body and the non-profit organization. The Senate was composed of elected members of the Band (Disc File 2009.Nov 9.d.pdf, fr. 54). Four of the nine board members of the separated non-profit organization, which became known as Pakúu Cultural Community Services in 2006, are not members of the petitioning entity (Disc File 2009.Nov 9.c.pdf, fr. 60).

In the early 2000s, the Band established an administrative office in San Fernando. It subsequently created an administrative department, tribal codes, voting districts, and more formal membership criteria and procedures (Disc File 2009.Nov 9.d.pdf, fr. 57-59). Using the name Fernandeno Tataviam Band of Mission Indians, the petitioner formally incorporated in 2006 as a nonprofit Mutual Benefit Corporation under California law (Disc File 2009.Nov 9.d.pdf, fr. 56). In 2009, the petitioner created a more formal and better documented membership list and submitted a documented acknowledgment petition to the OFA in response to a TA letter it had received from the OFA in the late 1990s (Disc File 2009.Nov 9.d.pdf, fr. 57; Disc File 2009.Nov 9.a.pdf, fr. 1).

The 2015 supplement for criterion 83.7(c) indicates that leader Rudy Ortega, Sr., passed away in 2008, after which his son Larry Ortega was elected and served as president of the petitioner's constitutional government until early 2015. In the spring of that year, Rudy Ortega, Jr., who had served since 2008 as captain of the Ortega lineage community, was elected president (p. 22).

**Comments on the Fernandeno Documentation for Categories of Evidence for Criterion 83.11(c), *Political Influence or Authority*, 1952 through 2015**

**83.11(c)(1)(i) The entity is able to mobilize significant numbers of members and significant resources from its members for entity purposes.**

The petitioner claims that it meets this category of evidence (Disc File 2009.9 Nov.d.pdf, fr. 62), but the petition summary does not do an adequate job of interpreting the actual evidence for this claim. A general failure of the petitioner's oral history project, upon which most of the evidence is based, is that it did not sample enough tribal members to ascertain a member's broad perspective on either what the entity leadership was doing or its importance to them. Neither did it ask relevant questions of those interviewed in regard to entity mobilization, issues of importance, knowledge of political processes, and

intra-tribal conflicts. The petition does provide some examples of the mobilization of members and member resources, but here again it fails by not attempting to quantify the number of members or resources involved. A “significant” number cannot be determined if you have not first defined the whole number and then provided some estimate of the percentage or portion of the whole that was mobilized.

The first and best example of entity mobilization during this period, and one that the evidence summary in frame 62 does not particularly emphasize, is the effort in the late 1960s and early 1970s to encourage entity members to register for the California Indian Judgment Fund. The petition evinces that meetings were held on this issue and claims that most of the member families registered, but it does not quantify what percentage or portion of members sought enrollment in the Fund.

The petitioner’s political organization and activities evolved exponentially beginning in the early 1970s. The petition lists a number of issues and activities, such as welfare assistance, protection of cultural resources, cultural restoration, and developing ties with local governments, but it provides neither references nor data regarding the number of members or member resources involved. No indication is given as to how many members attended entity political meetings or participated in entity activities.

The evidence summary in frame 62 lists “federal recognition” as one of the collective activities that mobilized members. However, the petition in this section provides neither a description of federal recognition being discussed as an issue or goal nor of actions the Band took in regard to petitioning for Federal acknowledgment and documenting that petition.

**83.11(c)(1)(ii), Many of the membership consider issues acted upon or actions taken by entity leaders or governing bodies to be of importance.**

The petitioner claims that it meets this category of evidence for this period because "the leadership has been engaged in California Indian Judgment registration, cultural education, defending cultural resources, establishing ties and relations to local governments, and other collective activities" (fr. 62-63). This summary misses the point that this category of evidence is asking for documentation of issues and actions of importance to the membership of the petitioner and not to its leadership. Leadership can act in a vacuum, and this category of evidence is aimed at measuring the existence of an interactive political relationship, i.e., that leaders have followers that consider their actions to be important to them. The leadership of the Fernandño petitioner is much more proactive during this period, and most members may have very well considered the actions of leaders to be of importance, but the evidence for this assumption is not established. This seems to be due to two failures of the petition that have been highlighted elsewhere: (1) failure to quantify the number of members involved in order to determine if categories of evidence that require "significant," "most," or "widespread" membership measurements are met; and (2) failure to provide a wider sample of regular members in its oral history project and to ask questions specifically relevant to the acknowledgment criteria (e.g., how important do you consider Federal acknowledgment to be for the future of the Band?).

**83.11(c)(1)(iii), There is widespread knowledge, communication and involvement in political processes by most of the group's members.**

The petitioner claims to meet this category of evidence during this period because of member participation in lineage, family, and community meetings prior to 1971, as well as elections of officers at community meetings or "regularly scheduled ballot elections" since 1971 (fr. 63). However, the petition generally fails to document the number of members that participated in meetings or

elections in order to determine if this involvement included most entity members. Also, no measure is provided of member knowledge or communication of the petitioner's political processes to determine if it was "widespread." These are deficiencies in the petition that might have been overcome by actual quantification of member involvement and greater sampling and more precise questioning in the oral history project.

**83.11(c)(1)(iv), The entity meets the criterion in § 83.11(b) at greater than or equal to the percentages set forth under § 83.11(b)(2).**

The petitioner claims to meet this category of evidence for this period, but provides no summary of its evidence here, merely referring the reader to the section of the petition addressing criterion 83.7(b). As noted above, these comments conclude that the petitioner did not meet criterion 83.11(b), community, for the period from 1952 through 2009.

**83.11(c)(1)(v), There are internal conflicts which show controversy over valued entity goals, properties, policies, processes or decisions.**

The petitioner claims to meet this category of evidence for this period because it "had several contested internal conflicts over decisions, entity goals, and processes" (fr. 64). However, the only conflict that the petitioner comes close to documenting during these years is the challenge by certain family leaders to Rudy Ortega's leadership in the 1950s.

**83.11(c)(1)(vi), The government of a federally recognized Indian tribe has a significant relationship with the leaders or the governing body of the petitioner.**

The petitioner has not submitted documentation regarding this new category of evidence in the 2015 regulations.

**83.11(c)(1)(vii), Land set aside by a State for petitioner, or collective ancestors of the petitioner, that is actively used for that time period.**

The petitioner has not submitted documentation regarding this new category of evidence in the 2015 regulations.

**83.11(c)(1)(viii), There is a continuous line of entity leaders and a means of selection or acquiescence by a significant number of the entity's members.**

The petitioner has not specifically submitted documentation regarding this new category of evidence in the 2015 regulations. However, the petition has identified a continuous line of leaders since 1951 and the 2009 documented petition indicates that the petitioner has submitted a chronological list of leaders to the OFA. Sufficient information has not been submitted to determine if a significant number of members either selected or acquiesced to this leadership prior to recent times when leaders were formally elected. The petitioner might easily meet this new category of evidence if it provides more data.

**Section 83.11(c)(2), High Evidence: The petitioner will be considered to have provided sufficient evidence of political influence or authority at a given point in time if the evidence demonstrates any one of the following:**

**(i) Entity leaders or other internal mechanisms exist or existed that:**

**(A) Allocate entity resources such as land, residence rights, and the like on a consistent basis.**

The petitioner claims to meet this category of High Evidence for this period because "leaders established tribal and state nonprofits for fundraising, community building, facilitation of job searches , and support for community events" (fr. 64). However, the petition fails to establish that the various nonprofits constituted "entity resources" of the Band, since they were funded primarily by non-members, administered in part by non-members, and provided resources and services at least in part to the larger San Fernando Indian community.

**83.11(c)(2)(i)(B), Settle disputes between members or subgroups by mediation or other means on a regular basis.**

The petitioner claims to meet this category of High Evidence for this period because "families and lineages mediated internal affairs." Yet, the petition fails to describe or document any dispute between members or families that were resolved by leaders or family or lineage processes during these years.

**83.11(c)(2)(i)(C), Exert strong influence on the behavior of individual members, such as the establishment or maintenance of norms and the enforcement of sanctions to direct and control behavior.**

The petitioner again claims to meet this category of High Evidence for this period because "the lineages and families continued to enforce the rule of exogamy" (fr. 64). However, the petition provides no examples of this enforcement or any other way in which Band, family, or lineage leaders influenced the behavior of individual members. Neither does it provide any examples of the specific establishment of behavioral norms or the enforcement of sanctions against members.

**83.11(c)(2)(i)(D), Organize or influence economic subsistence activities among members, including shared or cooperative labor.**

The petitioner claims to meet this category of High Evidence for this period because "tribal and private nonprofits organized collective work efforts on behalf of community goals and activities" and paid "volunteer workers who are band members" (fr. 65). It is arguable whether these examples constitute "subsistence activities." The petition does not adequately describe or document collective work efforts or distinguish the extent to which they also involved non-members of the Band. Neither does it quantify the number of Band members involved or establish that they were dependent on this work for their subsistence.

**83.11(c)(2)(ii) (3), The petitioner has met the requirements in § 83.11(b)(2) at a given time.**

The petitioner claims that it meets this category of High Evidence because it has demonstrated High Evidence for maintaining social relations within a community during these years (fr. 65). However, as indicated above, the petitioner's present evidence meets no High Evidence categories for criterion 83.11(b), community, and appears to meet only one category of regular evidence for this criterion from 1952 through 2009. Meeting the criterion requires a combination of two or more categories of evidence.

**Conclusions for Criterion 83.11(c), *Political influence or Authority*, 1952 through 2015**

The evidence of the Fernandeano petitioner's existence as a tribal political entity does not seem to come together until the early 1970s. By that time, it had an elected leader in Rudy Ortega, Sr., a formal entity name as the San Fernando Mission Indians, issues around which it could mobilize members, including registration for the California Indian Judgment Fund, and at least nominal participation of all three lineages (Ortega, Ortiz, and Garcia). Since the 1970s the petitioner greatly expanded its activities and subject issues to include cultural and religious site monitoring, increased involvement in health, education, and charity programs, and greater sophistication of its governance with a constitution, an administrative office, voting districts, etc. Although the petition does a good job of describing the activities of the leadership since the 1970s, it could be strengthened by identifying elected members of the governing body and indicating how they voted on specific tribal issues.

What is sorely missing in the petition are descriptions and documentation of member involvement in political processes, the kind of evidence that the defined categories for criterion 83.11(c) specifically request. In other words, evidence that many or a significant number of members were in fact mobilized by issues defined by the leadership, that they were well versed on the issues and

discussed them, and were generally engaged in political processes with the leadership, including the resolution of any internal conflicts. Such evidence may very well exist, but the petitioner has failed to establish it because it has not attempted to either describe or quantify member knowledge of or participation in political processes.

Because its focus has been primarily on the political participation of the leadership rather than that of the membership, the petition has generally failed to evince the existence of an interactive political relationship. Apparently, the petitioner does not have adequate documentation of attendance at meetings, issues discussed, and vote tallies. Much of the evidence presented is based on oral history interviews with leaders or those close to the leadership. The petitioner might have come closer to meeting the criterion if its oral history project had sampled a greater number of regular Band members and asked them questions that were more specifically relevant to the defined categories of evidence for the criterion. Such inquiries could have addressed their knowledge of the issues defined by the leadership and participation in formal meetings or informal discussions regarding those issues.

Although the Fernandño petitioner has better evidence of political influence or authority for the decades since 1970, it fails to meet criterion 83.11(c) for the overall period from 1952 through 2015 because its documentation does not adequately meet any of the eight separate categories of evidence for this criterion, primarily because of its failure to evince member participation in political processes. It may be able to at least partially meet the new category of evidence in (§ 83.11(c)(1)(viii) of the revised regulations, having a continuous line of leaders and a means of leadership selection or acquiescence by a significant number of members. The existing evidence claims a continuous line of leaders since 1900, although the evidence of leadership prior to 1951 is based primarily on the oral history statements of the Rudy Ortega, Sr., the petitioner's leader until

2008. The major problem the petitioner has in meeting this category with its existing evidence is that it has not clearly documented a leadership selection process prior to the early 1950s at best and perhaps later. While the petitioner might argue that while there may have been no formal selection process members at least acquiesced to the selection of the Ortegas, nonetheless it would still be hard pressed with the existing evidence to show that a "significant" number of members acquiesced to their leadership because the current petition has not quantified member involvement.

### **Criterion 83.11(d) *Governing Document***

#### Explanation of the Criterion and Its Requirements

This criterion reads as follows in the 2015 regulations:

#### **d) *Governing document*. The petitioner must provide:**

**(1) A copy of the entity's present governing document, including its membership criteria; or**

**(2) In the absence of a governing document, a written statement describing in full its membership criteria and current governing procedures**

Essentially every petitioner was found to meet the governing document criterion under the previous 1978 and 1994 regulations (which is similarly worded in § 83.11(d) of the revised regulations) and that is to have a governing document or some other written document that defines its membership criteria. Criterion (d) is required primarily so that the OFA can adequately measure a petitioner's membership to determine if the current members meet the membership criteria. To the extent that the membership criteria require proof of descent from ancestors in the historical tribe claimed, the criterion also helps measure the evidence for criterion (e), descent from a historical tribe. While a governing document is not required, if one is submitted it also helps the OFA evaluate the

evidence for criterion (c), political influence or authority, by understanding how the petitioner has formally defined its political structure and then measuring the extent to which the petitioner actually abides by its governing document. As noted, no petitioner has ever failed to meet this criterion, because it only requires a statement of the membership criteria. However, if the membership criteria are not adequate and are included in a governing document that also is inadequate, this can greatly hinder the petitioner's ability to meet criteria (c) and (e).

The Fernandño petitioner claims that its membership criteria are established in Chapter 3, Article 6 of its constitution, which has not been provided by the OFA. The petition narrative does not describe the membership criteria, it merely describes the procedures for considering membership applications (Disc 2009.9 Nov.d.pdf. fr. 69). However, because the petitioner likely has adequate membership criteria in its governing document or could readily provide a written description of its current membership criteria, it meets criterion 83.11(d).)

### **Criterion 83.11(e), *Descent from a Historical Tribe***

#### Explanation of the Criterion and Its Requirements

This criterion requires in the 2015 regulations that:

**83.11(e)(1) The petitioner's membership consists of individuals who descend from a historical Indian tribe (or from historical Indian tribes that combined and functioned as a single autonomous political entity).**

**(1) The petitioner satisfies this criterion by demonstrating that the petitioner's members descend from a tribal roll directed by Congress or prepared by the Secretary on a descendency basis for purposes of distributing claims money, providing allotments, providing a tribal census, or other purposes, unless significant countervailing evidence establishes that the tribal roll is substantively inaccurate; or**

**83.11(e)(2) If no tribal roll was directed by Congress or prepared by the Secretary, the petitioner satisfies this criterion by demonstrating descent from a historical Indian tribe (or from historical Indian tribes that combined and functioned as a single autonomous political entity) with sufficient evidence including, but not limited to, one or a combination of the following identifying present members or ancestors of present members as being descendants of a historical Indian tribe (or of historical Indian tribes that combined and functioned as a single autonomous political entity):**

- (i) Federal, State, or other official records or evidence;**
- (ii) Church, school, or other similar enrollment records;**
- (iii) Records created by historians and anthropologists in historical times;**
- (iv) Affidavits of recognition by tribal elders, leaders, or the tribal governing body with personal knowledge; and**
- (v) Other records or evidence.**

Criterion 83.11(e) requires proof that that a petitioner's current membership descends from an historical tribe or from two or more tribes that have joined together and acted politically as a single entity. This criterion requires a petitioner to provide a list of its current members and ancestry charts and vital records that demonstrate how current members descend from ancestors who were members of an historical tribe. Under the 2015 regulations, "historical" is interpreted as meaning "before 1900."

Criterion 83.11(e) is more straightforward than criteria 83.11(b) and (c). What constitutes evidence of tribal community and political influence is often subject to broad interpretation, but Indian ancestry is not. You can either prove descent from a historical tribe or you cannot. Exceptions can be made for some families that may lack documentation but that have been a part of the historical tribal community (if there is a high probability that they have Indian ancestry) as well as for members of other tribes who marry into the community. However, non-Indian

spouses, non-Indian collateral relatives, and non-Indians adopted by the petitioner should not be included in any official tribal membership roll submitted to the OFA.

It should be obvious that the inclusion of non-Indians in the membership is not acceptable. But there are also important factors that must be considered regarding the inclusion of those individuals who can demonstrate Indian descent. In addition to being able to prove ancestry, it must also be shown (in order to meet criteria 83.11(b) and (c)) that a substantial portion of the members descend from families that interacted more or less continually as part of the petitioner's historical community. As noted, the Fernandefio petitioner has a problem in documenting the continuous social and political interaction of the three primary lineage families it claims. The DOI accepts the fact that some family members move away and then later rejoin the community, but it looks askance at members who have not had any social or political connection until recent times. Therefore, the guiding principle should be that a petitioner should not accept a person into membership if either they or their parents and grandparents are not known by present members to have been a part of the petitioner's community. The hard reality is that if there are present members who cannot demonstrate their ancestry and connection to the historical tribe the petitioner is claiming, it is imperative to drop them from membership. This is because their presence on the tribal roll may kill the chances of gaining Federal acknowledgment. It may be possible to add some of these dropped members after a petitioner becomes federally acknowledged, because there is almost no scrutiny by the DOI of the membership procedures of tribes after they are federally acknowledged.

It should be noted that the DOI has in the past made some allowance for petitioner's members who could either not document descent from the historical tribe or for whom there was not sufficient information on which to make a determination. In the Mohegan case, for example, what is now the OFA

determined that 15 percent of the tribal membership could not document descent from a historical tribe, but the AS-IA still determined in a proposed finding that the tribe met criterion 83.7(e). The Mohegan petitioner chose to drop those members that could not be documented. However, it was not required to take this action in order to meet criterion 83.7(e). The precedents of Federal acknowledgment decisions under the 1978 and 1994 regulations indicate that a minimum of 80 percent of a petitioner's current members must demonstrate descent from an historical tribe in order to meet criterion (e) (see the OFA's 2005 Draft Acknowledgment Precedent Manual, pp. 232-33.)

The Fernandefio petitioner's evidence for criterion 83.11(e) could not be commented on because its genealogical data and records and membership lists were not made accessible. These records are, at least in part, protected from public disclosure under provisions of the Privacy Act and the Freedom of Information Act. The petitioner claims that it had no comprehensive membership list prior to the one it submitted to the DOI (Disc 2009.9 Nov.d.pdf, fr. 72). The OFA's 1997 technical assistance review of the initial petition questioned the Indian ancestry of those current members claiming descent from Antonio Maria Ortega, who the petition claims to be a tribal captain from 1904 to 1941 and who is a progenitor of most of the defined leaders and members of the petitioning entity following that period. The petitioner submitted additional evidence regarding the ancestry of Antonio Marie Ortega in its 2009 documented petition (Disc 2009.9 Nov.d.pdf, fr. 73-79). However, it cannot be determined, absent the full genealogical record, whether this new evidence will be sufficient to permit the petitioner to meet criterion 83.11(e).

If the present evidence does not meet criterion 83.11(e) the petitioner is subject to an expedited proposed finding declining Federal acknowledgment under the 2015 regulations (83.26(a)(1)(ii)). Failure to document the Indian ancestry of Antonio Marie Ortega would, in and of itself regardless of meeting any other

criteria, be fatal to the Fernandño petitioner's case. Under § 83.26(a)(3) of the revised regulations, the OFA can issue a negative proposed finding if a petitioner does not meet criteria 83.11(e), (f), or (g) during a Phase I evaluation.

**Criterion 83.11(f) *Unique Membership***

This criterion requires that:

**The petitioner's membership is composed principally of persons who are not members of any federally recognized Indian tribe. However, a petitioner may be acknowledged even if its membership is composed principally of persons whose names have appeared on rolls of, or who have been otherwise associated with, a federally recognized Indian tribe, if the petitioner demonstrates that:**

**(1) It has functioned as a separate politically autonomous community by satisfying criteria in paragraphs (b) and (c) of this section; and**

**(2) Its members have provided written confirmation of their membership in the petitioner.**

This criterion is required because the DOI did not want federated recognized tribal components or factions to be able to use the Federal acknowledgment process to break up acknowledged tribes. Even though the Federal government consolidated unrelated Indian entities on the same reservation, the DOI wanted to make sure that entities that desired to separate would have to do so through Congressional legislation or some other route.

The Fernandño petitioner has provided the OFA with a statement, signed by its governing body, indicating that a predominate portion of its membership is not enrolled in any federally recognized tribe (Disc 2009.9 Nov.d.pdf, fr. 85). In addition, the petitioner's governing document provides that applicants for membership must submit a sworn letter of relinquishment of membership in any other tribe (Disc 2009.9 Nov.d.pdf, fr. 69). Therefore, the petitioner appears to meet criterion 83.11(f).

**Criterion 83.11(g), Congressional Termination**Explanation of the Criterion and Its Requirements

This criterion requires that:

**Neither the petitioner nor its members are the subject of congressional legislation that has expressly terminated or forbidden the Federal relationship. The Department must determine whether the petitioner meets this criterion, and the petitioner is not required to submit evidence to meet it.**

Criterion 83.11(g) is a mandatory requirement because the DOI does not have the authority to acknowledge tribes or tribal members whose Federal relationship was terminated by Congress. Only Congress can restore such a relationship.

The Fernandño petitioner has provided the OFA with a statement, signed by its governing body, indicating that neither the band nor its individual members have been the subject of legislation terminating a Federal relationship (Disc 2009.9 Nov.d.pdf, fr. 88). Under the revised regulations, a petitioner is not required to submit evidence demonstrating that it meets this criterion because the DOI will determine if the criterion is met. The only tribal entities in California whose Federal trust relationship was terminated by Congress were a number of recognized Rancherias (small reservations), primarily in northern California. Most of those tribal entities have subsequently had their Federal relationship restored by Congress. It does not appear from the historical record that the Fernandño petitioner was a part of any of those terminated tribal entities. Therefore, it is very likely that it will meet criterion 83.11(g)/

**CONCLUSION**

These extended comments have provided an evaluation of the evidence that the Fernandño Tataviam Band of Mission Indians has submitted to the DOI in the narrative of its 2009 documented petition for Federal acknowledgment as a tribe

in accordance with 25 CFR 83, as well as in the three supplemental reports it submitted in 2015. The comments have evaluated this evidence under the revised regulations published by the Assistant Secretary of the Interior for Indian Affairs (AS-IA) as a Final Rule in the *Federal Register* on July 1, 2015. In accordance with § 83.7(b) of the revised regulations, the Fernandefio petitioner decided to proceed under the 2015 regulations. Despite this decision, the petitioner submitted supplemental reports in September 2015 that addressed criteria 83.7 (a), (b), and (c), the mandatory criteria for entity identification, community, and political influence or authority under the 1994 regulations. While the information in the supplemental reports provided further historical background and context for the petition, nearly all of it addressed the 19<sup>th</sup> century, which is not a period for which the OFA will evaluate the Fernandefio petition. The revised 2015 regulations provide that the evaluation period for criteria 83.11(a), (b), and (c) begins in 1900.

These comments have concluded that the Fernandefio petitioner cannot support its claim of having had previous Federal recognition as a tribe as late as 1904, thus meeting § 83.12 of the 2015 regulations, the criterion for unambiguous previous Federal acknowledgment. The provisions of this section substantially lowers the burden of proof for meeting criteria 83.11(a-c) for those petitioners that can evince having had a previous government-to-government relationship with the United States.

These comments found further that the Fernandefio petitioner does not have adequate evidence to meet three of the seven mandatory criteria for Federal acknowledgment under the 2015 regulations. For reasons explained in these comments, it could not be determined at present whether the petitioner met the very critical criterion 83.11(e), descent from an historical tribe. Failure to meet this criterion would result in the DOI issuing an expedited proposed finding denying the petitioner Federal acknowledgment.

These comments have concluded that the Fernandefio petitioner does not currently have adequate documentation to meet criteria 83.11(a), identification as an Indian entity since 1900; 83.11(b), social relations within a distinct community since 1900; and 83.11(c), political influence and authority within a distinct entity since 1900. They found that the Fernandefio petitioner does appear to have sufficient evidence to meet criterion 83.11(d), having a governing document that defines its membership criteria; 83.11(f), not being comprised principally of members of federally recognized tribes; and 83.11(g), never having had a Federal relationship terminated by Congressional legislation.

The Fernandefio petitioner's documented petition was projected to be actively considered by the DOI in early 2014 under the 1994 regulations, but the petitioner requested time to decide if it wanted to proceed under those regulations or wait to be evaluated under the then proposed revised regulations, if and when they were published as a Final Rule.

The 2015 regulations are more beneficial to the Fernandefio petitioner given the fact that they permit a starting date of 1900 rather than 1789 for criterion (b) and (c). This means that the petitioner would not have to provide evidence for the period from 1847 through 1899, a more than half-century for which it has insufficient evidence. Likewise, the revised regulations contain new and modified categories of evidence for criterion (b) and (c) that a petitioner may be able to use to enhance its case. Perhaps for these reasons, the Fernandefio petitioner decided to be evaluated under the revised regulations. Those regulations allowed it do so without submitting new evidence. As noted, the petitioner subsequently submitted three supplemental reports to the OFA following the publication of the revised regulations in 2015, but these reports addressed criteria in the 1994 regulations with time spans going back to 1789 and focused primarily on the period before 1900. Instead of submitting these

reports with evidence for the time periods that the OFA is not now required to evaluate, the Fernandeno should have taken the time and made the effort to draft a new narrative and gather new evidence, including oral histories, targeted specifically to the revised time frames and categories of evidence in the Final Rule of 2015. Doing so would have likely enhanced its chances of gaining Federal acknowledgment under the DOI's administrative process, although, as these comments have indicated, it has enormous evidentiary gaps to fill.