

Criterion 83.12

Claim of Previous Federal Acknowledgment

A. Explanation of how the Federal Government previously acknowledged the petitioner. Federal officials acknowledged a trust relationship for purposes of legal representation and entitlement to Indian land rights.

The FTB was previously acknowledged by Federal officials as coming within the jurisdiction of the United States and entitled to the Federal Government’s protection and benefits from 1885 to 1904. Accordingly, the FTB’s petition must be reviewed under 25 C.F.R. § 83.12 with a date of previous acknowledgement of 1904. The activity of the Federal Government demonstrating previous Federal acknowledgement includes treatment as having collective rights in tribal lands or funds. This activity took the form of legal representation to advance those collective land rights, as well as resources supplied by Indian agents for the benefit of tribal members. This is evidence 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....” 25 C.F.R. § 83.12.

B. Description of evidence to demonstrate previous Federal acknowledgment includes, but is not limited to: (Federal Government treatment as having collective rights in tribal lands or funds (Option 3 in OFA draft outline) included in current draft.)

The earliest evidence of previous federal acknowledgement involves the U.S. government’s commission to Special Attorney for Mission Indians, Guilford Wiley Wells, in 1885. At the request of the Secretary of the Interior, the U.S. Attorney General, writing on June 26, 1883, appointed the Los Angeles law firm of Brunson and Wells (aka Guilford Wiley Wells) “...Special Assistant to the United States Attorney ... on behalf of the Mission Indians, of California, in cases involving their interests and rights in certain lands....”¹ The 1883 Annual Report of the Commissioner of

¹ Doc. 00144.DC. The term “Mission Indians” referred to Indians in Los Angeles County, including the Fernandeños, among others. An 1883 report by Helen Hunt Jackson and Abbott Kinney to the Commissioner of Indian Affairs stated that the Indian Bureau’s then-current definition of Mission Indians limited the term to Indians “in the three southernmost counties of California.” Doc. 95007, p. 3. Although the report itself did not identify those three counties, maps of the period when the report was written indicate that Los Angeles was one of those counties. See a map produced by the California Association of Counties, Doc. 95000. (For a history of all of California’s counties, see Doc. 95001. In its TA letter of October, 2016, p. 9, OFA misquoted the report as referencing the “four southernmost counties.”) Further, the 1884 Report of the federal agent in charge of the Mission Agency, J. G. McCallum, which was included in the Report of the Commissioner of Indian Affairs to the Secretary of the Interior, describes the location of the “Mission Indians of Southern California” as follows: At least two-thirds of the whole number live in San Diego County, nearly all the remainder in the county of San Bernardino, and a small number in Los Angeles County. They live in about twenty villages, generally on reservations, the nearest being about 30 miles and the farthest about 120 miles, by the roads, from this office. Docs. 95002.A. and 95002.B. Inclusion of the San Fernando Indians in this description can be inferred from the following statement: “These Indians have about twenty reservations, which include most of their villages, but several of these villages are within the boundaries of Mexican grants, for which patents have been issued by our Government, which contain no exceptions in favor of the Indians living upon them, but all, or nearly all

Indian Affairs explained² this appointment of Brunson and Wells as a direct response to the recommendations of activist and Department of Interior Agent Helen Hunt Jackson, assisted by US Indian Agent Abbot Kinney, who had been directed by the Department of the Interior in 1882 to investigate the conditions of the Mission Indians. According to the Commissioner's 1883 Report, Jackson and Kinney were to "ascertain the location and condition of the various bands" and to assist in identifying lands that could be acquired for those Indian groups that did not yet have reservations.³ To carry out this assignment beyond their own work, Jackson and Kinney recommended "...the appointment of a lawyer, or a law firm in Los Angeles, to act as special attorneys in all cases affecting the interests of these Indians."⁴ Jackson and Kinney recommended the firm of Brunson and Wells, and hoped that those lawyers could press claims on behalf of Indians who were driven off lands that they had long occupied and to which they had legitimate claims. Significantly, the Jackson and Kinney report refers to the Indians who would be represented by Brunson and Wells as "wards" of the United States government, their guardian: "He [the local Indian agent] is in the embarrassing position of a guardian of wards with property, and property rights; for the defense of which he is unable to call in legal assistance."

In his 1883 Annual Report, the Commissioner of Indian Affairs stated that he had already carried out Jackson and Kinney's recommendation by arranging for the appointment of Brunson and Wells as "assistants to the United States district attorney in such cases." Jackson and Kinney had identified the firm of Brunson and Wells because they knew "these lawyers to be of high standing at the bar, and to have a humane sympathy for Indians."⁵ Beyond that, the firm had already provided a legal opinion, which was Appendix A to Jackson and Kinney's Report on the Mission Indians of California to the Commissioner of Indian Affairs. In that opinion, Brunson and Wells concluded that Mexican law protected the rights of Indians to their lands; therefore, any land grants made by the Mexican governor could not confer good title on the grantee against Indians then in possession of the lands. This was the exact situation faced by the Fernandeños.⁶

In 1885, Wells represented "the San Fernando Indians" in an official government capacity to prevent their eviction. A letter from Eulogio F. De Celis, son of the grantee from Mexican governor Pio Pico, dated July 7, 1885, served to introduce Rogerio Rocha, a Fernandeño captain and FTB ancestor (see Criterion E), to Wells.⁷ The decision by Wells to take on the case is documented in

such grants, contained provisos in favor of such Indians." Doc. 95002.C. This was precisely the situation confronted by Rocha and the other Fernandeños.

² Docs. 95003.A.-C.

³ *Ibid.*

⁴ Docs. 95004.A.-C. This recommendation is endorsed, almost verbatim, in *Annual Report of the Commissioner of Indian Affairs for the Year 1883*, Docs. 95003.A.-C.

⁵ Docs. 95004.A.-C.

⁶ This grant had been confirmed by the California Land Commission, and patented to heirs of the grantee, Eulogio de Celis, in 1873. Doc. 95005 at 17; Doc. 95006. The United States did not appeal the Commission's decision to the United States Supreme Court. Not long thereafter, a similar Mexican grant of ex-Mission San Gabriel was invalidated by the United States Supreme Court, which held that Governor Pico had no authority to make the grant. *United States v. Workman*, 68 U.S. (1 Wall.) 745 (1863), Doc. 95008. In neither instance (San Fernando and San Gabriel) were the mission Indians' aboriginal or other rights to the land researched or considered, as required by Section 16 of the 1851 federal Act to Ascertain and Settle the Private Land Claims in the State of California. Doc. 95010.

⁷ Doc. 00168.B.DC; see also Doc. 000117.FTO regarding Brunson and Wells taking on the case.

an August, 1885 letter from future Mission Indian Agent Horatio N. Rust to Charles C. Painter. According to Rust, Wells had informed him that “the San Fernando Indians 20 miles north of Los Angeles have been ordered off and twice an officer has attempted to remove them, that Wells has delayed the effort and that last Saturday was set to remove them, that he still hoped to prevent it in some way.”⁸ On December 11, 1883, the Los Angeles Superior Court entered a default judgment against Rogerio, who represented the Fernandenses in the eviction proceedings, due to his attorneys’ error, the Thom & Ross firm,⁹ in filing his response in the name of “Rodrigo” rather than “Rogerio.”¹⁰ There were seven other named defendants regarding the same tract, but it is unclear whether default judgments were entered against them as well. More than a year passed before the sheriff was enlisted to carry out the evictions. In the summer of 1885, not long after notice of the “writ of possession” was served upon the defendants, Rogerio and the other Fernandenses, now represented by Wells, moved to quash the writ on the basis that it had been “improvidently granted.” Late in September of that year, the Superior Court refused to set aside the default, seeming to clear the way for evictions to occur. On October 10 of that year, Wells filed an affidavit in support of a motion to stay the writ,¹¹ identifying himself as “special assistant U.S. Attorney in Mission Indian cases for Southern California.” His affidavit included a statement “[t]hat the defendants herein are Mission Indians of the San Fernando Mission,” clearly demonstrating that he was representing a group of Indians, rather than one individual. He argued that the default may have been upheld, but the motion to quash the writ of possession was still pending. On November 2, 1885, Wells’ petition on behalf of Rogerio Rocha and Fernandense co-owners’ land interests was denied in Los Angeles County Superior Court.¹²

For purposes of determining prior federal acknowledgment, the fact of this representation is more important than the outcome of the suit, which depended on judges beholden to the state of California and its politics rather than to the Federal Government. As counsel for Rogerio Rocha and other Fernandenses, paid for his efforts by the United States government, G. Wiley Wells was

⁸ Doc. 00168.C.DC.

⁹ Cameron Thom was Mayor of Los Angeles from 1882-1884, also serving during his career as Los Angeles District Attorney and a California State Senator. He was very familiar with property issues associated with Mexican land grants, as he had served as a senior member of the staff of the United States Land Commission before moving to Los Angeles in 1854. Doc. 95010, pp. 44-46.

¹⁰ The sequence of events in the proceeding was documented by attorney Wells in his affidavit filed on October 10, 1885. Doc. 80834.USSC.

¹¹ Ibid. By then Wells was no longer practicing with Brunson, and signed the affidavit indicating his association with the firm of Wells, Van Dyke, and Lee.

¹² Docs. 80863. According to a story about the proceedings in the *Los Angeles Herald* a decade later, Charles Maclay was the uncle of former state court judge Robert Maclay Widney, “who was attorney for Messrs. Maclay and Porter when they secured a judgement to eject the Indians on December 11, 1883...” Doc. 80865.LA Herald. (Although Widney served as judge for only two years, he was always later accorded the title “Judge.” Docs. 95012.A-C.) The presiding judge in that court appearance was Judge Volney E. Howard, who had served for a relatively short time on the California Land Commission. Doc. 95011. “Judge” Widney, as Maclay and Benjamin F. Porter’s attorney, gained “in some manner incomprehensible” from Judge Howard “a judgement in favor of the plaintiffs, reciting that Rocha had been served with summons but had failed to answer. This was a palpable misstatement, for his answer was then regularly on the file and had been for five years, and is now on file in the record room of the superior court at the county court house, where it stands as an unimpeachable witness to the high handed and outrageous robbery of the poor Indian of his rights.” Doc. 80865.

unquestionably acting in an official capacity, on behalf of the U.S. Department of the Interior. His instructions were broad, charging him to handle “all cases affecting the interests of the Indians.” There was no particular need for the Secretary of the Interior to ratify his actions, other than by paying him for his services. As reflected in the U.S.-sponsored recommendation from Jackson and Kinney that led directly to Wells’ appointment, only Indians designated “wards,” for whom the United States acknowledged responsibility as “guardian,” were the subjects of his concern. Indeed, the other matters Wells worked on, including a property case on behalf of the Soboba Indians, were related to federally recognized tribal groups. The fact that land in the San Fernando Valley had become extraordinarily valuable, and the local state courts were arrayed against the San Fernando Indians’ claims, likely made it impossible for the Indian defendants to affirm rights to land that could have formed the foundation for a reservation. Nonetheless, Wells’ efforts to assert and protect the San Fernando Indians’ claims to their ancestral lands demonstrates that the federal government was treating them as a group possessing collective land rights for which it recognized responsibility. Repeatedly Wells, the federal agent involved with this work, refers to a group of “Indians,” not merely individuals.

Further evidence of previous Federal acknowledgement, documented below, dates from 1890s, when Frank D. Lewis began serving as Special Assistant U.S. Attorney for Mission Indians in a number of matters, including some involving the Fernandeños. Lewis was an employee of the United States government, as the Special Assistant U.S. Attorney for Mission Indians for the 1891 to 1897 period and a Special Agent of the Office of Indian Affairs to the Mission Indians from 1889 to 1891.¹³

As Special Assistant U.S. Attorney, Lewis was instructed by the U.S. Attorney General to take “such action as the Department of the Interior or Commissioner of Indian Affairs might direct, *or as in [his] judgment should be necessary...*”¹⁴ This direction from the Attorney General shows that Lewis had discretion to identify and take action on behalf of appropriate Indian entities. Lewis submitted short reports to the Attorney General, which were published in the *Annual Report of the Attorney General of the United States* for the 1892-1897 period. He made reports every year of his tenure as Special Attorney for Mission Indians.¹⁵ For example, in the *Annual Report of the Attorney General of the United States* in 1893,¹⁶ Frank D. Lewis made a report to the U.S. Attorney General and was listed as Special Attorney for Mission Indians.

Lewis also was serving the Commissioner of Indian Affairs, as the Attorney General’s direction makes clear, and as Lewis’s later communications with the Commissioner confirm. In his September 2, 1892 letter to the Commissioner of Indian Affairs, Thomas Jefferson Morgan, Lewis wrote, “I shall be glad to receive any further instructions to this matter the Commissioner may see

¹³ For Lewis’ appointment as a Special Agent, see Doc. 95013.

¹⁴ Doc. 95014, p. 142. Similarly, in an April 6, 1892 letter to Lewis from Charles Painter, head of the Indian Rights Association, Painter related that at both the office of the Attorney General and the Commissioner of Indian Affairs in Washington, D.C., he had been informed that “it belonged to the duties of [Lewis’s] office, without further instruction to take proper steps for the defense of the San Felipe Indians.” Doc. 95015 (emphasis added.)

¹⁵ See, e.g., Doc. 95016, pp. 218-220.

¹⁶ See Doc. 95014, pp. 142-143; see also a letter to the United States Attorney General concerning the San Fernando Mission Indians, Doc. 80863.Lewis.

fit to give.”¹⁷ In a letter he sent to the Commissioner of Indian Affairs on October 17, 1892, Lewis reported, “[s]ome time ago my attention was called to the condition of a company of Indians living on the edge of the San Fernando Grant in Los Angeles County, and I was asked to take such steps as I might find possible and advisable in order to secure to them land of which they had been unjustly deprived.” Lewis as Special Attorney to the Mission Indians was directed to find a “possible and advisable” plan to recover land for the San Fernando Mission Indians. He was directed by the Commissioner of Indian Affairs Office, and was reporting his plan for land recovery in the October 17, 1892 letter, and requesting action.¹⁸

Lewis pursued his responsibilities as a representative of the federal government to the Fernandeños. In his October 17, 1892 letter to the Commissioner of Indian Affairs, Lewis laid out his assessment of the Fernandeños’ situation and how the federal government, as trustee for the Indians, should address it:

Upon examining into the case, I found that these people were the remaining members and descendants of the Band or Village to whom Manuel Micheltorena, governor of California, granted one league of land May 3, 1843.¹⁹

He further reported that “[t]hese people had lived in quiet and undisturbed possession of the land called for in the grant for many years,” but later Governor Pico had granted the land to Eulogio de Celis. In 1873, the Board of Land Commissioners (established under the Act of 1852 to settle private land claims derived from Mexican law) confirmed the grant to de Celis. Lewis found, “[n]ot only had these Indians lived quietly and peaceably on the tract granted them by Micheltorena, but that Rojerio, the chief or captain had, up to 1884, paid state and county taxes regularly upon the land – that in 1885 under color of legal process they were removed entirely from the land and have ever since been kept out of possession.”

Mr. Lewis further reported that, “[t]hese Indians are extremely poor and are unable to stand the expense of an action in the courts to maintain their legal rights.” He argued that the failure of the Board of Land Commissioners to address the interests of the Indians in the land as required by the Act “should not be allowed to in any way militate against the interests and rights of the Indians, but their case is at the present time in such condition that it seems to be impossible to reestablish them in their lands within the outside boundaries of the San Fernando Ranch as long as the grant owners remain in their present position.”

Mr. Lewis reasoned that if the 1873 land patent confirming the grant could be cancelled and annulled, “the Indians will be put upon in equality with the grant owners before the courts, provided the sixteenth section of the Act of Congress created in the California Board of Land Commissioners is held to exempt the Indians from the necessity of presenting their claims to the Commission, and there seems to be no reason for placing any other construction upon it.”

Mr. Lewis concluded:

¹⁷ Letter, Frank D. Lewis to Commissioner of Indian Affairs, September 2, 1892, Doc. 80857.Lewis.

¹⁸ Letter, Frank D. Lewis to Commissioner of Indian Affairs, October 17, 1892, Doc. 80856.Lewis.

¹⁹ Letter, Frank D. Lewis to Commissioner of Indian Affairs, September 2, 1892, Doc. 80857.Lewis. and Letter, Frank D. Lewis to Commissioner of Indian Affairs, October 17, 1892, Doc. 80856.Lewis.

It is clear that by reason of the palpable neglect of its officers, the United States owes to these people the duty of using every means within its power to right the wrong under which they have suffered for so long a time, and I have the honor to request that you will recommend to the Honorable Secretary of the Interior that the necessary proceedings for the cancellation of the patent issued February 8, 1873, to Eulogio de Celis for the ex-Mission of San Fernando in Los Angeles County, California, be instituted.

Mr. Lewis enclosed with his letter a translation of the deed to the property and the Fernandeños' petition for the land in 1843.

Mr. Lewis contacted the General Land Office to research the Fernandeño matter. In a letter dated November 25, 1892 from the Commissioner of the General Land Office to the Commissioner of Indian Affairs,²⁰ the Land Commissioner reported that a "gentleman representing himself to be Special U.S. Attorney for your office and giving his name as Lewis, called at this office and examined the complete record in the case," including documents related to a prior analysis of the question of whether a claim should be filed seeking to cancel the de Celis patent.

Mr. Lewis was not entirely accurate about his facts. The land upon which Rogerio Rocha lived at the time of his eviction in 1886 was not the same league of land that had been granted by Governor Micheltorena in 1843 and later taken by Governor Pico to grant to Eulogio de Celis in 1846. Rather, Rocha was living (and had been paying taxes) on a 10-acre plot, to the northeast of the 1843 land grant to the 39 Indian petitioners. The circumstances of Rocha's acquisition of this 10-acre plot are not entirely clear, but it appears that de Celis had agreed, as a condition of his receiving the entire ex-Mission land from Governor Pico, to allow Indian occupants such as Rocha to remain on the land.²¹ That error, however, does not change the fact that Mr. Lewis was acknowledging a federal obligation to protect the Indian group that had been dispossessed from their lands – whether those lands were the original league granted by Governor Micheltorena or the much smaller substitute tract within the ex-Mission offered by Mr. de Celis. Furthermore, Lewis was correct in connecting Rogerio to the one league tract granted by Governor Micheltorena in 1843 as he was one of the 39 petitioners who had requested the grant of land.²²

That Mr. Lewis's actions constituted recognition of a *tribe* of Indians (rather than one individual) is evident from his references to "a company of Indians living on the edge of the San Fernando grant," "members and descendants of the Band or Village to whom Manuel Micheltorena, governor of California, granted one league of land May 3, 1843," and also to "[t]hese people" and "these Indians." Mr. Lewis expressly acknowledged a federal obligation to the Fernandeños, specifically "the duty of using every means within its power to right the wrong under which they have suffered for so long a time" and their entitlement to federal protection because of their status as an Indian tribe. He uses the plural, indicating representation of a group, not one individual such

²⁰ Doc. 80868.Commissioner.

²¹ See Indian Rights Association circular and affidavit from Eulogio de Celis, Doc. 95017, pp. 74-83. See also Doc. 90143.WRH (article originally published in 1904 by H. N. Rust, former Mission Indian Agent for the U.S. Indian Service).

²²The list of petitioners is presented in Doc. 40009.Q.DC.

as Rogerio Rocha. The “company of Indians” Lewis referenced was also not limited to members of Rocha’s family. Lewis was indicating the 39 Fernandinos who petitioned for and received the one-league grant and the Indians under their care, as well as their descendants. The record of the names of the grantees from the 1843 grant shows that they were all family heads and Indian members of San Fernando Mission, a group that extended beyond Rocha’s family.²³

Several points are worth emphasizing. First, the Commissioner of the General Land Office referred to Lewis working for the Commissioner of Indian Affairs office, and Lewis was given access to the “complete record in the case.”²⁴ The record of the case was collected by the General Land Office and was under review, thereby indicating that the Department of Interior had knowledge of and had studied the “private land claim in the State of California known as Ex-Mission San Fernando.”²⁵ The Land Office declined to take up the case not because they did not recognize the Fernandinos but because they did not believe that the Indians had a strong legal argument for the land in question.²⁶ The Department of Interior Land Office was fully aware of the Fernandeño land claim, and had collected appropriate documents, which Lewis went to study. The Land Office also made legal arguments about the merits of the private land petition.

The land granted by Governor Micheltorena was collectively owned by all 39 petitioners and the land was held in trust by the Mexican government. The deed forbids the joint owners to sell the land: “that all of them be mentioned without the(m) being able to sell the land ...”²⁷ The Fernandeño petitioners had requested the land as a collective holding, and it had been granted to them as such. Governor Micheltorena in a letter of April, 25, 1843 wrote: “Joaquin and his partners mentioned in the amended list are entitled to the tract of land they solicit to sow their grain.”²⁸

Lewis stated in a letter to the Commissioner of Indian Affairs, that “these people were the remaining members and descendants of the band or village to whom Manuel Micheltorena, Governor of California, granted one league of land May 3rd, 1843”²⁹ The Special Assistant

²³ Doc. 80799.Johnson, pp. 260-261; Duane Champagne and Carole Goldberg, *A Coalition of Lineages: The Fernandeno Tataviam Band of Mission Indians* (Tempe, AZ: University of Arizona Press, 2021), Appendix B, pp. 270-275.

²⁴ Doc. 80868.Commissioner.

²⁵ *Ibid.*

²⁶ Additional letters enclosed Lewis’s letter to the Commissioner explain the basis for the General Land Office’s view. In February, 1892, a Commissioner of the General Land Office had rendered an opinion to several others interested in challenging the de Celis patent, rejecting arguments that the patent was fraudulent and erroneous in designating boundaries for the tract. According to the Commissioner, “Notwithstanding the arguments for a suit, I am of the opinion that the case is stale, and that, in view of the failure on the part of the government to have patents to other private land claims in California, vacated by process of law, there is little probability that a chancery suit in the case at bar could be successfully maintained.” Doc. 95024.A.-95024.G. The Secretary of the Interior received this opinion, and concurred that proceedings to annul the patent should not be instituted. Doc. 95023. However, this particular request to the General Land Office did not raise the question of competing Indian rights, and the Office did not address them.

²⁷ Doc. 80867.Micheltorena.

²⁸ *Ibid.*

²⁹ Letter, Frank D. Lewis to the Commissioner of Indian Affairs, October 17, 1892, Doc. 80856.Lewis.

U.S. Attorney for Mission Indians identified a company of Indians and tied their identities to the San Fernando Mission Indians, who in collective action won themselves a square league of land for their self-support in 1843. Furthermore, Lewis was publicly identified in the Los Angeles Herald newspaper as representing the Fernandeño as a group. “Yesterday, Frank D. Lewis, attorney for the Indians of San Fernando Mission, commenced an action in the superior court of this county”³⁰ Significantly, he is described as representing the collective group, not individuals.

Lewis’s attention to Rogerio Rocha reflects Rocha’s status as a tribal leader, not Rocha’s possession of individual property rights. There are numerous sources that state that Rogerio Rocha was Captain of the San Fernando Indians from the 1860s.³¹ Special Attorney for Mission Indians Frank D. Lewis also identified Rogerio as a captain or chief, and wrote that he held the land for the collective benefit of his community. “Further examination showed that not only had these Indians lived quietly and peacefully on the tract of land granted to them by Micheltorena, but that Rogerio, the Chief or Capitan, had, up to 1884, paid State and County taxes regularly upon the land -- that in 1886 under the color of legal process they were removed entirely from the land and have ever since been kept out of possession.”³²

Furthermore, Lewis spoke of a group of Indians who shared the land and the land claim. “These Indians were extremely poor and are unable to stand the expense of an action in the Courts to maintain their legal rights.”³³ He referred to a group of Indians sharing the land, and not to one person owning the land. In 1878, Charles Maclay and his cousin George K. Porter initiated eviction proceedings against “Rocha and other Indians then in possession.”³⁴ Rogerio, as Captain, paid taxes to hold the land, which otherwise as a practical matter would have been lost to local government. As Lewis went on to explain, Congressional legislation in 1851, which had directed a Commission to examine and report on the land rights of Indians in California, failed to generate a report, by no fault of the Indians.³⁵

Special Assistant U.S. Attorney Frank D. Lewis’s written communications identified an Indian community of San Fernando Indians, with Rogerio as Captain, who were pursuing available legal actions to recover land originally granted to them in 1843. Lewis referred to a community from which we can identify ancestors of the petitioners. Lewis also reaffirmed, as numerous other sources do, that Rogerio was Captain of the San Fernando community.³⁶ In Lewis’s narrative account, Rogerio was a political leader, who managed land and took action to preserve the community’s last remaining collective assets. Frank D. Lewis, working directly for the United States Attorney General and the Commissioner of Indian Affairs, identified a Fernandeño

³⁰ *The Los Angeles Herald*, January 28, 1896, page 4, Doc. 80864. See also *The Los Angeles Herald*, Thursday Morning, January 23, 1896, page 5, Doc. 95018; *The Los Angeles Herald*, January 24, 1896, page 5, Doc. 80866.

³¹ See, e.g., 80811.Eugenia; 80849.Librado; 80842.LA Times.

³² Letter, Frank D. Lewis to the Commissioner of Indian Affairs, October 17, 1892, Doc. 80856.Lewis.

³³ *Ibid.*

³⁴ *The Los Angeles Herald*, January 21, 1896, p. 10, Doc. 80865.LA Herald (emphasis added)

³⁵ Letter from Frank D. Lewis to the Commissioner of Indian Affairs, October 17, 1892, Doc. 80856.Lewis.

³⁶ *Ibid.* See note 29, *supra*.

community with land and leadership, and with direct social and genealogical ties to the petitioning community.

Repeated, melodramatic portrayals of the eviction of the noble and pious Rogerio Rocha, in the press and Lewis's own communications, do not mean that the efforts of Lewis (and Wells before him) were only for an individual, or at most an individual and his immediate family, rather than for a tribal community. Contemporaneous documents attest that there was a group of Indians living in multiple dwellings on the Cienega farm from which Rocha was evicted. Only one of those people, Rocha's wife, Manuela, was related to him, and the couple had no surviving children.³⁷ References to Rocha's leadership role also supports the existence of a community, as without an entity, there can be no leader. At the time of Rocha's eviction, the sheriff who carried it out referred to Rocha as "the old Captain."³⁸ Ten years later, in an interview with the Los Angeles Herald, Rocha himself explained his role: "My father was a captain of my people....Then after my father died I became the captain, as all my people recognized me as such."³⁹

At the time, Lewis did not receive authorization from the Commissioner of Indian Affairs for a lawsuit to annul the de Celis patent.⁴⁰ Although authorization would have been strong evidence of federal recognition, recognition was evident even without a lawsuit. Legal and economic obstacles, not the failure to identify a body of Indian "wards," militated against the litigation. Recall that G. Wiley Wells, acting on behalf of the United States, had earlier received permission to represent the Fernandeños in the same matter, at a time, 1885, when the judgment of eviction had not yet reached finality.⁴¹ Once that judgment became final, the chances of successfully attacking the patent weakened considerably. Additionally, Lewis waited seven years after the eviction to reopen the issue, further harming chances of success. The Commissioner of the General Land Office explained the decision not to take up a related matter where non-Indians challenged the same de Celis patent:

The patent has been outstanding, in full force and effect, for nineteen years; the land is possessed by a corporation engaged in agriculture, with large interests involved, as appears by papers filed by present petitioners.⁴²

Most importantly, Lewis characterized the claim he wished to pursue as on behalf of a group of Indians, and therefore his actions as a Federal official are evidence of previous Federal acknowledgement. Indeed, it would only make sense for him to act on behalf of an Indian entity,

³⁷ See affidavit of Deputy Sheriffs Will A. Hammel and M. Agiurre, Doc. 000117.

³⁸ Doc. 80013.LAT.

³⁹ Doc. 80842.

⁴⁰ What he did obtain, in August of that year, was a quit-claim deed to all of Rocha's rights and title to the square league of ex-Mission San Fernando lands that Governor Micheltorena had granted to the 39, paying Rocha \$10 in exchange. The text of that deed is quoted in Doc. 80866. His purpose, he later said, was to acquire standing so he could bring suit as a trustee for the Indians' interests. See Letter from Frank Lewis, U.S. Special Attorney for Mission Indians, to the U.S. Attorney General, March 20, 1896, Doc. 80863.Lewis.

⁴¹ See Letter from Frank Lewis, U.S. Special Attorney for Mission Indians, to the U.S. Attorney General, March 20, 1896, Doc. 80863.Lewis.

⁴² Doc. 95024.F.

as it was not the Federal Government’s responsibility to represent (and spend Federal resources on) individual Indians who had severed tribal relations or were not part of a recognized Indian group.

Throughout his tenure, which lasted until 1897, Lewis equated the Fernandeño Indians he represented with federally recognized tribes, including them in references to tribes without distinguishing the Fernandeños from other tribes. The same month of October, 1892, when Lewis wrote to the Commissioner of Indian Affairs about his proposed litigation to cancel the de Celis patent, he also made an address to the Lake Mohonk Conference of Friends of the Indians. Reporting on the work of the Smiley Commission, charged with carrying out the terms of the Mission Indian Act of 1891, he acknowledged that despite the Commission’s good work, “[t]he Indians living on Mexican land grants — particularly those on the Warner’s Ranch, the Santa Ysabel Ranch, the San Felipe Ranch, and the San Fernando Ranch — still faced the possibility of forced removal.”⁴³ Federal recognition was forthcoming or already in place for the Indians occupying all the other lands that Lewis mentioned, either through federal executive orders or the purchase allowed under the Mission Indian Relief Act of 1891. Of all the tracts mentioned, however, only the San Fernando Ranch was in the heart of a major land boom, making acquisition of land for a reservation prohibitively expensive.⁴⁴

As Special Attorney for Mission Indians, Lewis pursued a solution for the Fernandeño Indians at San Fernando through the length of his tenure until 1897. As late as 1896, Lewis was publicly and actively engaged in securing the land rights of the Fernandeños who were led by Rogerio Rocha.⁴⁵ Rogerio Rocha was identified as “one of the Mission Indians, who has a title to certain lands in the San Fernando Valley.” Here again an external source identified a group of San Fernando Mission Indians collectively owning the land.

The land issues at San Fernando caused a stir of controversy in the newspapers, primarily the Los Angeles Herald, during the 1890s. Particular attention was paid to the situation of Rogerio Rocha, who, following the eviction in 1885, built a rough hut for himself in a wild, inaccessible ravine known as Lopez Canyon, living “in daily fear lest some white man shall drive him away.”⁴⁶ The

⁴³ Valerie Sherer Mathes, *Helen Hunt Jackson and Her Indian Reform Legacy* (Norman, OK: University of Oklahoma Press, 1990), p. 117, Doc. 96071.Mathes Excerpt. See also Doc. 96072.Mohonk, p. 111.

⁴⁴ This point is strongly suggested in a statement by Assistant Commissioner of Indian Affairs Edgar B. Merritt, submitted to the House Subcommittee on Indian Affairs in 1922. Referencing the work of C. E. Kelsey, commissioned by the United States to identify lands for California Indians over the first decades of the twentieth century, Merritt stated that it would have been “impracticable to ask Congress to appropriate money to buy developed lands at a thousand dollars an acre, such as you can buy in California, because we knew in advance that Congress would not give us money for that purpose.” “Indian Tribes of California,” Hearing before a Subcommittee on Indian Affairs, House of Representatives, 67th Cong. 2d Sess., April 28 and 29 (Part 2), Doc. 96078.Hearings, p. 277.

⁴⁵ Lewis is identified as the “Government Attorney for Mission Indians” and Rogerio Rocha a member of a community. *The San Francisco Call*, January 28, 1896, p. 4, Doc. 80864.San Francisco Call.

⁴⁶ “The Mission Indians: Their Condition and Our Duty Toward Them,” *The Facts* (Redlands, CA), December 4, 1890, p. 2, Doc. 95021 (providing lecture by Major Horatio Rust, United States Indian Agent for the Mission Consolidated Agency).

pros and cons of the San Fernando Mission Indian lands rights were argued, with many commentators supporting the collective land rights of the San Fernando Mission Indians.⁴⁷
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In 1903, H. N. Rust, who had served as head of the Mission Agency from 1889-1893, recounted a visit Rocha made to his home in Pasadena. According to Rust's notes from the occasion:

As an old man to come 25 miles to ask for food to sustain life. He is apparently well and strong considering his age. He speaks Spanish only, is tidy in his habits and took dinner with us conducting himself modestly and well.⁴⁹

Rust also did his best to help Rocha survive, knowing that Rocha had a leadership role and would be responsible for others in the Fernandeño community. In those same notes from the 1903 visit he wrote:

I was appointed Indian agent I visited him and helped him all I could with the miserable pittance allowed the agent for the sick and indigent of three thousand Indians about two hundred dollars per annum. Since then I have twice requested the Agent to send him rations which I think has been done, about five dollars in value. I have requested the present Agent Dr. Wright to send him rations which he will do if he can.⁵⁰

Rust's notes demonstrate that while he was an Indian agent to the Mission Indians in the 1890s he provided support to Rogerio Rocha and the other Indians under his charge, with assistance from federal funds for Indians. Those notes also indicate that his successor did the same, presumably up until Rocha's death in 1904. These actions by the Mission Indian Agents are consistent with recognition of a group of Indians to whom the federal government owed obligations of protection and support. The United States generally does not dispense federal funds to Indians who have no affiliation with a recognized tribe, simply because of their ancestry.⁵¹ And the fact that aid was given to the acknowledged "captain" suggests that officials of the United States understood that Fernandeño leaders took care of others in their lineage and network of lineages.

The assistance provided to Rogerio Rocha and his people by Agent Rust and his successor, Special U.S. Attorney Wells's representation of the Fernandeños who were threatened with eviction from their ancestral lands, and Special Assistant U.S. Attorney Lewis's request for litigation on behalf of Fernandeño land claims are evidence that "the United States Government recognized the

⁴⁷ See Docs. 80840.A.LA Herald; 80840.B.LA Herald; 80841.LA Herald; 80842.LA Herald; 80843.LA Herald; 80844.LA Herald; 80845.LA Herald; 80847.LA Herald; 80848.LA Herald; 80864.San Francisco Call; 80865.LA Herald; 80866.LA Herald; 95018.

⁴⁹ Doc. 95022.A.

⁵⁰ Doc. 95002.E.

⁵¹ Nell Jessup Newton et al., *Cohen's Handbook of Federal Indian Law* (New Providence, NJ.: LexisNexis, 2012 ed.), p. 135, Docs. 95019.A. and 95019.B. Such distributions might well run afoul of equal protection guarantees in the U.S. Constitution. See *Morton v. Mancari*, 417 U.S. 535 (1974), Doc. 95020 (rejecting fifth amendment challenge to Indian employment preference based on political status of federally recognized tribes).

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....” 25 C.F.R. § 83.12. In taking these actions, Rust, his successor, Wells and Lewis dealt with the Fernandeños as a group and identified it as a distinct political and social entity.

C. Description of evidence to demonstrate previous Federal acknowledgment includes, but is not limited to: Federal Government treatment as having collective rights in tribal lands or funds

Both of the federally-commissioned attorneys representing the Fernandeños, G. Wiley Wells and Frank Lewis, identified the San Fernando Indians as a community, and were representing the entire group. Their references to collective land rights encompassed the entire community of Fernandeños. Their references to Rogerio as “captain” show that they were aiding the small group of surviving Indians who had been born or baptized at San Fernando Mission and who came from villages/lineages in the area. As explained in Section A of this Petition, “Claim of Historical Indian Tribe,” Petitioner likewise consists of descendants of village/lineage members who were born or baptized at San Fernando Mission and who came to identify and act collectively as Fernandeño.

Special Attorney Wells represented the Indians who were living with Rogerio Rocha, but those were not the only Fernandeño Indians subject to eviction at that time. Through separate but identical lawsuits, Maclay and Porter sought to evict Antonio Maria Ortega, progenitor of the present-day Ortega lineage, and other Fernandeño Indians who were living on former Mission San Fernando Lands.⁵² Unlike Rocha, these other defendants had not been represented and had not filed an answer to the eviction suits. It would be far more difficult to challenge a default judgment under those circumstances. Wells chose to contest the Rocha eviction because an answer had been actually filed, and therefore that is where his legal arguments had the best chance of prevailing.

Even if one focuses on the 39 Indians who petitioned for a square league from Governor Micheltorena, continuity exists with FTB. Those 39 were seeking – and received in 1843 – a collective grant for the Fernandeño community.⁵³ In the letter, Joaquin identifies himself as “Alcalde,” an elected leadership title, and he is speaking on behalf of the entire group of Fernandeño Indians. The land was granted on condition that it be inalienable, a clear indication that it was intended as the homeland for the Fernandeño community.

Several of the 39 are identified in Attachment 03 – SFR Petitioners Analysis as ancestors or progenitors of the FTB. Alcalde Joaquin (No. 1 in Attachment 03) was a brother-in-law to Francisco Papabubaba, the progenitor to the FTB Ortega lineage. Joaquin married Felipa, Francisco Papabubaba’s sister and had two children with her. Cornelio (No. 32 in Attachment 03), a progenitor of the FTB Garcia lineage, is also identified among the 39. Furthermore, Rogerio (No. 14 in Attachment 14) was identified in the list of petitioners. Although Rogerio had no children who survived to adulthood, by the 1860s he was leader of the Indians whose lineages had come to understand themselves collectively as Fernandeño.

⁵² Doc. 80835.USSC.

⁵³ 80799.Johnson, pp. 260-261; Letter from Joaquin, Alcalde of Mission San Fernando, to His Excy the General (Governor Micheltorena), April 10, 1843, Los Angeles, Doc. 80858.Joaquin.

