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March 3, 2025

Department of the Interior  
Office of the Assistant Secretary-Indian Affairs  
Attn: Office of Federal Acknowledgment (OFA)  
Mail Stop 4710 MIB  
1849 C Street, N.W.  
Washington, D.C., 20240

Dear Nikki Bass, Director of the OFA:

In accordance with Part 83.22(b)(1)(iv) of Title 25 of the *Code of Federal Regulations* (25 CFR 83.22(b)(1)(iv)), we, as individuals, are submitting for your staff's review our interested party comments on the Salinan Tribe of Monterey and San Luis Obispo Counties' (STMSLO) documented petition for Federal acknowledgment.

Based on our detailed analysis, the STMSLO is not worthy of Federal acknowledgment as an Indian tribal entity. This is because its existing evidence does not meet the mandatory criteria for determination of such status, as established in 25 CFR 83.11.

A copy of these comments is also being provided to the STMSLO. Upon request, we would be happy to provide a digital copy of our analysis.

Sincerely,



Michael L. Lawson

Alex Sanders



Annandale, Virginia 22003

**COMMENTS ON THE DOCUMENTED  
PETITION FOR FEDERAL ACKNOWLEDGMENT  
PRESENTED BY  
THE SALINAN TRIBE OF MONTEREY AND  
SAN LUIS OBISPO COUNTIES**

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

By

Alex Sanders  
Michael L. Lawson

March 3, 2025

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## SUMMARY

This document contains our comments regarding the evidence the Salinan Tribe of Monterey and San Luis Obispo Counties (STMSLO) 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). Our comments address and evaluate the evidence presented by the petitioner in its 2024 submission as Petition #406. The DOI will 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 Salinas petitioner has opted to proceed under the 2015 regulations.

We have concluded that the Salinan petitioner does not appear to have sufficient evidence at present to meet four of the seven mandatory criteria for Federal acknowledgment under the 2015 regulations, including criterion 83.11(e). Failure to meet this criterion would result in the Office of Federal Acknowledgment (OFA) issuing an expedited proposed finding to deny Federal acknowledgment.

In our opinion, the petitioner does not currently have adequate evidence 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; § 83.11(c), political influence or authority within a distinct entity since 1900; and (e), descent from a historical tribe. The petitioner does appear 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 majority of the external identifications through 1975 cited by the petitioner refer to its origins at the San Antonio Mission and, to a lesser extent, at the San Miguel Mission until the 1920s and 1930s when the Toro Creek group emerges. We have evaluated the petitioner's evidence as if those groups represent the petitioner until a poorly described merger around 2001 of the Toro Creek Indians with another group, likely the Salinan Tribe of Monterey and San Luis Obispo Counties. By that standard, the submitted documentation is adequate to support their identification between 1900 and 1975, from 2000 to 2024, and perhaps the 1990s. The petitioner failed to present sufficient evidence to meet criterion 83.11(a), identification as an American Indian entity since 1900, for one decade, the 1980s, and its evidence for the 1990s hinges on one personal note that does not clearly identify the petitioning entity.

However, the evidence submitted does not appear to provide substantially continuous external identifications of a Salinan tribal entity broader than two of the

three historical lineages—the Pedro Encinales line and the Encinales Bylon Toro Creek line. Though we cannot confirm this without genealogical records, the petitioner appears to fail to include any evidence of identification of members of the Agata Maria lineage. This is significant since as of its 2024 petition, 172 of the petitioner's 248 members (69%) are members of the Agata Maria lineage. An identification of the narrower Monterey/Toro Creek entity is not the same as an identification of the current petitioner, and the current petitioner is substantially different from the entity that is being identified. Consequently, we have concluded that the petitioner likely has not provided sufficient evidence to meet criterion (a) for the years between 1900 and 2003. 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 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 Salinan 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)).

The Salinan petitioner fails to meet criterion § 83.11(b) for the period from 1900 through 2024 in every category. Among the reasons for this are its failure to evince relationships and social interaction between members, particularly involving all three family lineages, the absence of documents demonstrating a persistent collective identity over more than 50 years, and an inability to document the existence of distinct social communities or community institutions encompassing at least half of the membership.

In evaluating the Salinan petitioner's evidence under the 2015 regulations for the period from 1900 through 1954 for criterion (b), we conclude that the petitioner has not demonstrated the existence of a distinct community within the definition established by the DOI. Though the petitioner shows that several related Indians lived within the area known as "The Indians" sometime between 1900 and the 1920s and that a shifting number of Indians resided near Toro Creek around the same period, it fails to evince that they had significant social relationships or interactions outside of their immediate families and appears to completely omit any evidence regarding members of the Agata Maria lineages. Moreover, the petitioner fails to show differentiation or patterns of social distinction by non-members throughout the period.

The petitioner neglects to supply sufficient evidence of social relationships and patterns of informal social interaction throughout the period. For example, there is no evidence of informal social interaction that exists broadly across the entity. The petitioner does not offer evidence of community events within its membership that

would evince interaction such as birthdays, celebrations, weddings and funerals. Direct evidence of social relationships connecting individual members is also lacking. The petitioner's best evidence is from seven meetings of a Pierce family kinship group that took place between 1934 and 1953. The participating siblings discussed the needs of individual members, including of the Encinales line in Monterey County, and their intention to help them meet these needs. Presumably, they were made aware of these through existing social relationships, though the petitioner is often unable to explain which ones. Furthermore, these are only a handful of meetings over twenty years. And as in the rest of the petition, there is no evidence of the participation of members of the Agata Maria lineage.

The petitioner attempts to sidestep its lack of evidence of relationships and interaction by arguing that there was a distinct social community of Indians at Toro Creek and that past DOI findings have determined that first degree kin, defined as parents, grandparents, children and siblings, are assumed to maintain contact even after they leave these distinct social communities. However, there are problems with the petitioner's argument. First, the petitioner never establishes the existence of a distinct social community at Toro Creek or provides robust evidence identifying its residents at given points of time before 1929. So, the assumption that these individuals would maintain social relationships based on previous residence in those communities is limited to the few individuals who can be identified. For example, the Pierce family siblings can be assumed to maintain relationships based on previous residence as well as their first-degree kin. Since the Toro Creek group appears to be tightly interrelated, however, that may be sufficient to demonstrate social relationships. However, even if we grant the petitioner these assumed relationships, there appears to be no evidence for social relationships within the members of the Agata Maria lineage or between members of that line and members of the other two historical lines of descent between 1900 and 1954. Furthermore, the petitioner neglects to document social relationships or interaction between the members of the Encinales line, many of whom reside in Monterey County even after the petitioner shifts its focus to Toro Creek. The petitioner does not provide sufficient evidence to demonstrate a network of ties and obligation within its membership.

The petitioner argues that it retained a persistent collective identity continuously over a period of more than 50 years. However, it fails to provide any evidence of such an identity before the 1930s. In 1934, a group of individuals, likely five siblings within the Pierce family, formed a kinship group that they named "The Toro Creek Indians." The petitioner maintains that this group meets the evidentiary burden for this category at least through its last documented meeting in 1953 and perhaps to 1969. However, it is not clear whether this small kinship group is sufficient evidence of collective identity. Even if it meets the requirements of the category, its activities are documented from 1934 to 1953 with limited evidence that the group continued its meetings into the late 1960s. Under that very generous interpretation,

the evidence of a collective identity would end in 1969, thus limiting the identity to 35 years. And this identity is limited to one, perhaps two, of the three historical lineages, omitting the most numerous, the Agata Maria line.

The petitioner asserts that it meets three categories of High Evidence within § 83.11(b)(2) within different periods of time: § 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 members residing in that area (for 1900-1910); § 83.11(b)(2)(ii) at least 50 percent of the members of the entity were married to other members of the entity (for 1910-1930); and § 83.11(b)(2)(iv), 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 1930-1954). Yet the evidence for all three categories is inadequate. The petitioner misunderstands the requirements for § 83.11(b)(2)(ii) and interprets the category as at least 50 percent of marriages of the entity rather than "at least 50 percent of the members of the entity." There is no evidence that 50 percent of the members of the entity were married to other members of the entity. The petitioner attempts to demonstrate that 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 for the years between 1900 and 1910 using the 1900 and 1910 Federal censuses, but it is unable to demonstrate either part of the evidentiary requirements. While just over 50 percent of the named members lived in a geographic area in Monterey County in the first decade of the 20<sup>th</sup> century, this appears to exclude members of the Agata Maria line, and the petitioner fails to show consistent interaction of the "balance of the entity" in either 1900 or 1910. There may be evidence of a distinct community social institution, in the form of a kinship group, from 1934 to 1953; however, only four or five members of the petitioning entity, all siblings from the Pierce family, attended its infrequent meetings and were engaged in its activities.

The petitioner also attempts to argue that it qualifies through categories within criterion (c): § 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; § 83.11(c)(1)(iii), there is widespread knowledge, communication, or involvement in political processes by many of the entity's members; § 83.11(c)(2)(i)(A), allocate entity resources such as land, residence rights, and the like on a consistent basis; and § 83.11(c)(2)(i)(D), organize or influence economic subsistence activities among the members, including shared or cooperative labor. The petitioner has failed to provide sufficient evidence to meet any of these categories.

The Acknowledgment regulations require that a petitioner must demonstrate that it comprises a distinct community and that it has existed since 1900. The Salinan

petitioner has failed to meet any of the categories of evidence within the community criterion. Therefore, it does not meet criterion § 83.11(b) for the years from 1900 through 1954.

In evaluating the Salinan petitioner's evidence under the 2015 regulations within criterion (b), for the period from 1955 through 2024, we conclude that the petitioner has not demonstrated the existence of a distinct community within the definition established by the DOI. Among the reasons for this are its failure to evince relationships and social interaction between members, particularly outside of their family lines, the absence of documents demonstrating a persistent collective identity over more than 50 years, and an inability to document the existence of distinct social communities or community institutions.

The petitioner neglects to supply sufficient evidence of social relationships and patterns of informal social interaction throughout the period. For example, there is minimal evidence of social relationships or informal social interaction that exists broadly across the entity, even in a relatively recent period when oral interviews of members might contribute. The petitioner does not offer evidence of community events within its membership that would evince interaction such as birthdays, celebrations, weddings, and funerals. Direct evidence of social relationships connecting individual members is also lacking. The petitioner's best evidence is three notes between Pierce family members in 1969, 1992, and 2001. These notes demonstrate continuing interaction between immediate kin and refer to different matters of concern to the writers, but their usefulness stops there. There is no evidence of social relationships or informal social interaction beyond these brief missives. As in the rest of the petition, there is no evidence of the participation of members of the Agata Maria lineage.

The petitioner also claims that it meets § 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. There may be limited evidence of a collective identity into the 1950s and 1960s due to an indication that the Toro Creek Indian kinship group continued its meetings past 1953 into the late 1960s. However, even in the most generous interpretation, that would end in 1969, thus limiting the identity to 35 years. Moreover, only four or five members of the petitioning entity, all siblings from the Pierce family, attended its infrequent meetings and were engaged in its activities. This identity appears to be limited to one of the three historical lineages, omitting the most numerous, the Agata Maria line.

The petitioner asserts that it meets one category of High Evidence within § 83.11(b)(2): § 83.11(b)(2)(iv), 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 1955-2024). The

petitioner provides limited indirect evidence suggesting that the Toro Creek Indian kinship group continued its meetings past 1953 into the late 1960s, but it is unable to demonstrate that the group encompassed at least 50 percent of the members, thus failing to meet the requirements even if the petitioner was limited to the Toro Creek group. The petitioner does not evince that there were any other distinct community social institutions in its recent history.

The petitioner also attempts to argue that it meets § 83.11(b)(1)(xi), through categories within criterion (c): § 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 and § 83.11(c)(1)(iii), there is widespread knowledge, communication, or involvement in political processes by many of the entity's members. However, as we have demonstrated in the section on (c), political authority or influence, the petitioner has failed to provide sufficient evidence to meet any of these categories.

Aside from the lack of evidence, the other major problem underlying the entire petition, including criterion (b), is the fact that the current Salinan petitioner appears to be very different from the Toro Creek Indian group that it tries to document through the 20<sup>th</sup> century, and the petitioner consistently fails to confront this fact throughout its petition, including the sections concerning criterion (b). Specifically, the evidence submitted by the petitioner does not document community within a Salinan tribal entity broader than two of the three historical lines—the Pedro Encinales line and the Encinales Bylon Toro Creek line. Though we cannot confirm this without genealogical records, the petitioner appears to fail to include any evidence of community participation of members of the Agata Maria line. This is significant since as of its 2024 petition, 172 of the petitioner's 248 members (69%) descend from the Agata Maria line. Documenting the narrower Mission/Toro Creek entity is not the same as documenting the current petitioner, and the current petitioner is substantially different from the entity that is being described.

In sum, the Salinan petitioner's evidence does not meet criterion § 83.11(b), community. It fails to adequately demonstrate the existence of a distinct tribal community in which there were significant social relationships or interaction involving all three claimed lineages for the period from 1900 through 2024. Therefore, the petitioner fails to meet criterion § 83.11(b).

The petitioner does not have sufficient evidence to meet criterion § 83.11(c), political influence or authority, from 1900 to the present. Its failings include the lack of identified leaders, councils or other mechanisms to exert influence or authority, its inability to evince member awareness of and participation in political processes or concerning any political matters, and, similar to the rest of the petition, its apparent omission of members of the Agata Maria lineage in its submission.

In evaluating the Salinan petitioner's evidence under the 2015 regulations for the period from 1900 through 1954 for criterion (c), our comments conclude that the petitioner provides very little documentation of political influence or authority over its members as an autonomous entity. From 1900 to 1933, the petitioner fails to identify leaders or describe alternatives such as councils, internal processes, or other mechanisms that allowed it to maintain political influence or authority over its members as an autonomous entity. In 1934, the Toro Creek Indians group was formed, and five of the Pierce siblings were named as "tribal leaders." The petitioner suggests that this group acted as a governing body, including allocating entity resources, and organizing economic subsistence activities. However, this group is better described as a Pierce family kinship organization. Of the petitioner's membership, only four or five members, all Pierce siblings, attended its six meetings between 1935 and 1953, and much of their discussion focused on organizing tasks concerning their business enterprises, particularly a commercial abalone fishing business. There is no evidence that these enterprises were entity resources, and little direct evidence that any of the membership aside from immediate Pierce family members worked in them.

Moreover, there is no evidence of involvement in political processes or issues by the entity's membership. There are no elections, no indications that the members discussed any processes or mechanisms to make decisions or represent the entity with outsiders, and no examples of decision-making. The only possible example is the naming of five Pierce siblings as "tribal leaders" in 1934 within the Toro Creek Indians group, and the limited evidence available to the public suggests that this was a kinship organization in which there were only five participants, that being the same five Pierce siblings. The primary issue of these years appears to be the eviction of three members from Toro Creek in the early 1930s and the loss of access to a tribal cemetery. However, there is no evidence that, aside from Les Pierce, the membership was involved in or even aware of the matter.

The petitioner also claims that it meets § 83.11(c)(i)(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), by meeting § 83.11(b)(i)(viii), the persistence of a collective identity continuously over a period of more than 50 years, notwithstanding any absence of or changes in name. There is very limited evidence in the petition of such a collective entity in the 20<sup>th</sup> century past 1953 and none after 1969. While the petitioner does not include them, there are regular newsletters between 2009 and 2024. These would certainly qualify if, as is likely, the petitioner submits them in an addendum. The petitioner's best case under a very generous interpretation brings them a collective identity of only 35 continuous years from 1934 to 1969 and again from 2009-2024. The Salinan petitioner fails to demonstrate the continuous existence of a collective identity for more than 50 years, and thus fails to meet this category.

The petitioner then argues that it meets criterion (c) by evincing the requirements of three categories of High Evidence within criterion (b) for different years during the period: § 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 members residing in that area; § 83.11(b)(2)(ii), at least 50 percent of the members of the entity were married to other members of the entity; and § 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. If the petitioner managed to provide adequate evidence, these High Evidence categories would allow the petitioner to meet (b) and (c) for the relevant years. However, as we have discussed in detail in our comments, the petitioner has not succeeded in providing sufficient evidence to meet any of the three categories.

For the period 1955 through 2024, there is a striking lack of evidence of any political activity or process until the 2000s. The last documented meeting of the Toro Creek Indian kinship group takes place in 1953, and the petitioner is unable to provide evidence of exertion of political influence or authority within its membership for nearly the entire period. There is a reference to past voting, presumably on claims, in a 1969 letter, but the petitioner fails to document or explain the matter. The lack of evidence is underlined further in the apparent 2001 merger of the Toro Creek Indian group with another entity, likely the Salinan Tribe of Monterey and San Luis Obispo Counties. The petitioner provides no documentation of this significant political act—no meetings, no evidence of discussion or disagreement, and no materials from the other party. Nor are there oral interviews describing the decision-making process, even though this event occurred less than twenty-five years ago.

The petitioner also fails to identify leaders or describe alternatives such as councils, internal processes, or other mechanisms that allowed it to maintain political influence or authority over its members as an autonomous entity. While the petitioner does not include them in its submission, there is publicly available evidence of tribal newsletters starting in 2009, and they include tribal council election results. The petitioner may be able to meet § 83.11(c)(1)(viii), a continuous line of entity leaders and a means of selection or acquiescence by a significant number of the entity's members, from at least 2009 if it can document the council selection process and demonstrate that a significant number of the entity's members participated or acquiesced.

The petition consistently fails to provide descriptions and documentation of member involvement in political processes; this is precisely the sort of evidence that the defined categories for criterion 83.11(c) specifically request. This would include evidence that many or a significant number of members were mobilized by issues

defined by the leadership, that they were well versed on the issues and discussed them, and that they were generally engaged in political processes with the leadership, including the resolution of any internal conflicts.

The petitioner may be able to partially meet § 83.11(c)(1)(ii) of the revised regulations, many of the membership consider issues acted upon or actions taken by entity leaders or governing bodies to be of importance, from 2004 to 2024 if it can provide sufficient evidence that membership was concerned with tribal access to Morro Rock for ceremonial purposes and can document that the current petitioner had taken the form, with all three historical lines of descent, that it currently has. The Salinan Tribe of Monterey and San Luis Obispo Counties has produced a newsletter since 2009 and should be able to take oral histories of members about its activities and interaction over the last twenty years.

In sum, the Salinan petitioner's present evidence fails to meet criterion § 83.11(c), political influence or authority, for the entire period from 1900 through 2024. There is virtually no evidence documenting the Salinan petitioner as a tribal political entity until 2009. The petitioner has failed to document a means of maintaining political influence or authority, evince member awareness of and participation in political matters or processes, or meet any other of the categories of evidence with the criterion. Therefore, the petitioner fails to meet criterion § 83.11(c).

In order to meet criterion (d), a petitioner must 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 Salinan petitioner has submitted a 2004 Constitution and a 2024 Enrollment Ordinance to the DOI. 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."

There are several components to this criterion, including: identifying an historical tribe (or two or more tribes that have joined together and acted as a single autonomous entity) and its members; demonstrating that the historical tribe existed at a particular point before 1900; and documenting that the petitioner's members descend from individuals who belonged to that historical tribe. The Salinan petitioner has identified the Indian populations of the San Antonio de Padua Mission (Mission San Antonio) and the San Miguel Arcángel Mission (Mission San

Miguel) as its historical tribe, and using Mission records, it has identified 29 residents of these two missions as ancestral to its current group's members. All 29 individuals, and all 248 current members, are claimed as members of three identified "historical tribal lines": the Agata Maria line, the Encinales Bylon Toro Creek line, and the Pedro Encinales line. The petitioner asserted that the Indian mission population "originally came from the surrounding Indian villages that existed just prior to the founding of the two missions based on the result of Spanish policy at the time."<sup>1</sup>

The DOI may be willing to interpret the commingling of Indian populations at a Spanish Mission as creating an "historical Indian tribe" at that Mission. However, since the Salinan petitioner is claiming that the Indian populations of two separate Spanish missions were its historical Indian tribe, the petitioner must demonstrate that the Indian populations of these two separate Missions combined and functioned as a single autonomous political entity. In our judgement, the petition has failed to do this. The petitioner has not provided evidence showing how these two populations combined and functioned as a single political entity in Monterey County or in San Luis Obispo County either prior to 1900 or afterward. Instead, the petitioner has described the marriage patterns of the Encinales family, the unjust loss of lands within the Milpitas Mexican Land Grant, and the shift of Clara Encinales and her children to Toro Creek. Moreover, while the petitioner traces members of the Pedro Encinales line and the Encinales Bylon Toro Creek line, it appears to fail to include any evidence of participation of members of the Agata Maria lineage. This is significant since as of its 2024 petition, 172 of the petitioner's 248 members (69%) descend through the Agata Maria lineage.

Furthermore, the petitioner stated that the Toro Creek Indian group joined "the Salinan Indian Tribe" around 2001 "to continue the tribal entity."<sup>2</sup> No information has been provided on the circumstances of that combination or about the existing "Salinan Indian Tribe", its membership, community function, or political functioning. The petition is not clear about this, but the new Salinan entity may have been the already existing Salinan Tribe of Monterey and San Luis Obispo Counties that submitted an intent to petition to the Department in 1993. The petitioner is responsible for documenting that entity's history and demonstrating how it meets the Department's criteria before its combination with the Toro Creek Indians around 2001. Yet it has not done so.

The Salinan petitioner's evidence concerned with documenting descent for criterion § 83.11(e) could not be fully 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

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<sup>1</sup> Salinan Tribe of Monterey and San Luis Obispo Counties (STMSLO), Petition for Federal Acknowledgement, 2024, p. 290 of pdf.

<sup>2</sup> STMSLO, 2024 Petition, p. 278 of pdf.

Freedom of Information Act. It cannot be determined, absent the full genealogical record, whether the petitioner's genealogical data and records 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 § 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(d), (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 petitioner's current governing document provides that applicants for membership cannot be enrolled with the Salinan Tribe unless he or she relinquishes membership with any other tribe, band or rancheria, and the petitioner has established documentation for compliance with single tribe enrollment. Therefore, the petitioner appears to meet 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. 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, 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 Salinan petitioner was a part of any of those terminated tribal entities. Therefore, the petitioner appears to meet criterion § 83.11(g).

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

### **Explanation of the Criterion and Its Requirements**

In the revised 2015 regulations, this criterion is 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.**

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. 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."

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 last 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, or colored.

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 seven 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. The Salinas petitioner has not claimed previous Federal acknowledgment in its 2024 submission.

### **Comments on the Salinan Tribe's Decade-by-Decade Evidence for Criterion 83.11(a)**

#### 1900-1909

The petitioner argues that the Indian Population schedules of the 1900 Federal Census, when combined with other evidence such as Homestead Act applications, is sufficient to demonstrate that the Census records identify the petitioner as an Indian entity. As the petitioner itself acknowledges, the census enumerator did not identify an Indian community or group, but rather classified individuals as Indians and used the term "Mission" as the name of the tribe. The DOI has clearly and repeatedly insisted that census records must identify individuals as part of an Indian entity in order to qualify, and that the term "Mission Indian" is insufficient. In its 2007 Proposed Finding to decline acknowledgment of the Juaneño Band of Mission Indians (Petitioner #84B), the DOI stated that the "Mission Indian census category was much larger than a group that descended from or claimed descent from the historical Indian tribe" and that "the descriptive term 'Mission Indian' did not apply exclusively or predominately to descendants of the historical Indian tribe of SJC Mission or any other Indian entity associated with a specific mission, and therefore it does not constitute evidence of an identification of a SJC Indian entity."<sup>3</sup> This precedent would apply here as well. The 1900 census does not qualify as identification of an Indian entity.

The petitioner provides seven pieces of evidence concerning land ownership in Monterey County: six Homestead Act applications for Encinales family members and an 1884 township map marked up by the petitioner based on land acquired by the Encinales family through the provided 1862 Homestead Act applications. Of these applications, only one has been made available, and that dates from 1892 and does not identify an Indian entity. None of the other five applications were made available so we cannot confirm when they were produced. However, if they are similar to the 1892 application of Eusebio Encinales, then they do not identify the applicant as a member of the petitioner or an antecedent entity. The map dates from 1884 and was marked up by the petitioner recently. While it is helpful in understanding the pattern of land ownership by the Encinales family, it does not qualify as evidence of external identification. The petitioner argues that these documents should be understood in combination with the 1900 Federal census records as proof of the existence of "a very distinct group of interrelated Indians living in a very isolated and remote geographic area near the San Antonio

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<sup>3</sup> U.S. Department of Interior, Office of Federal Acknowledgment, Proposed Finding, Juaneño Band of Mission Indians (Petitioner #84B), 2007, pp. 38-39.

Mission.”<sup>4</sup> At least two of these documents do not identify the petitioner as an Indian entity and are not contemporary to the 20<sup>th</sup> century. The remaining five applications cannot be evaluated at this time; however, they also do not appear to qualify as evidence to meet criterion (a).

The 1993 journal article, “*Walking Along Deer Trails: A Contribution to Salinan Ethnography Based on the Field Notes of John Peabody Harrington*,” asserts that “a community of Salinan speakers re-established themselves [at “The Indians”] after the secularization of Mission San Antonio in 1834, and that anthropologists “began visiting this community in the late nineteenth century.” That work “continued well into the early part of the twentieth century.”<sup>5</sup> Much of the rest of the article describes J. Alden Mason’s work in the 1910s and Harrington’s investigations in 1922 and the early 1930s. The petitioner argues that “collective evidence” from the article of numerous visits from anthropologists and others, including a reference to an Alfred Kroeber visit to the area in 1901, meets the requirement for this criterion. We disagree. This article is a summary of the anthropological work on Salinan speakers in the past, and a mere reference to visits by anthropologists to Salinan speakers is insufficient evidence. Moreover, since the article was published in 1993, it is not a contemporaneous identification of an Indian entity.

The petitioner cites Alfred Kroeber’s *Handbook of the Indians of California* as evidence of identification of the petitioning group for this decade on the basis that the research conducted by Kroeber was performed in 1901, even though the work was originally published in 1925 by the Bureau of American Ethnology of the Smithsonian Institution. Kroeber questioned whether a Salinan group existed. Kroeber wrote that:

“The Salinan Indians are one of those bodies of natives whom four generations of contact with civilization have practically extinguished. Some 40 remain, but among these the children do not speak the language, and even the oldest retain only fragmentary memories of the national customs of their great-grandfathers. Missionaries and explorers happen to have left only the scantiest notices of the group; and thus it is that posterity can form but a vague impression of their distinctive traits.”<sup>6</sup>

Kroeber’s use of the term “group” appears to refer to one of the past as the days of California explorers were over. Kroeber does not identify a contemporary Indian entity.

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<sup>4</sup> STMSLO, 2024 Petition, pp. 36-37 of pdf.

<sup>5</sup> STMSLO, 2024 Petition, pp. 72-73 of pdf.

<sup>6</sup> STMSLO, 2024 Petition, pp. 29-31 of pdf.

The June 20, 1904, article in the *San Francisco Examiner* identifies Donna Perfecta Encinal as belonging “to the San Miguel tribe” and that she “came to the San Antonio a bride.”<sup>7</sup> This qualifies as identification of an Indian entity.

The petitioner cites Beatrice Casey’s 1957 book, *Padres and People of Old Mission San Antonio*, as evidence of identification of a Salinan tribal entity. While Casey identifies Indians who were forced off of the Milpitas Land Grant in the 1870s and moved along the Santa Lucia Creek “as a little colony” and as “Milpitas Indians,” Casey dates the group, including Eusebio Encinales and his sons, in the 1880s, rather than the 20<sup>th</sup> century.<sup>8</sup> The only reference from the 1900-1909 period concerns a passage describing St. Anthony’s Day in 1904 and the interest of Dona Perfecta Encinales in the restoration of the Mission. This book does not identify a contemporaneous Indian entity.

The petitioner cites Zephyrin Engelhardt’s book, *San Antonio de Padua: The Mission in the Sierras*, as identification of an Indian tribal entity for the decade, despite the fact that the book was published in 1929. The cited passage describes the interest and work of Donna Perfecta Encinal and her sons in the restoration of the San Antonio Mission. 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 “the identification of individuals as Indians is not sufficient to meet the criterion, which requires the identification of an Indian entity.”<sup>9</sup>

The November 1949 news release from the National Catholic Welfare Conference entitled, “*Mission Founded by Fr. Serra Being Restored in California: Will be Brothers’ Novitiate*,” describes the rededication of the Sanctuary at the San Antonio Mission and relates that Perfecta Encinal[es], as well as her sons and daughters, contributed a statue of St. Anthony, which had been preserved in “the mountain home,” presumably of Ms. Encinal[es]. This article does not identify an Indian entity and is not contemporaneous with the 1900-1909 period.

The Kelsey Census of 1905-1906 enumerated non-reservation Indians within Monterey County, whom Kelsey described as “Salin Stock,” in four separate settlements: 26 in Pleyto, 4 in Sur, 24 in Mansfield and 23 in Milpitas. Kelsey did not survey San Luis Obispo County. In his separate 1906 report to the Commissioner of Indian Affairs, while he listed Indians rather than bands, Kelsey called these settlements “California rancherias” and interpreted these groups as “remnants of each stock or tribe or band” and stated that they “occupy to-day almost

<sup>7</sup> STMSLO, 2024 Petition, p. 38 of pdf.

<sup>8</sup> STMSLO, 2024 Petition, pp. 39-40 of pdf.

<sup>9</sup> U.S. Department of the Interior, Office of Federal Acknowledgment, Final Determination, Ohlone/Costanoan Muwekma Tribe, 2002, p. 29.

exactly the same territory their ancestors did a century ago.”<sup>10</sup> As evidence of external identification, the 1905-1906 census identifies Salinan settlements or bands of Indians at Pleyto, Sur, Mansfield, and Milpitas in Monterey County. In its description of Kelsey’s 1905-1906 census, the petitioner identifies only Indians from Mansfield and Milpitas as from its tribal group; no Indians from Pleyto or Sur were recognized as belonging to the petitioner’s group.<sup>11</sup> Without access to the petitioner’s genealogical records, we cannot ascertain if Indians from Pleyto or Sur are among the petitioner’s antecedents but it is striking that the petitioner does not claim them.

The petitioner provides two pieces of evidence, Kelsey’s 1905-1906 census and the 1904 article from *The San Francisco Examiner*, that qualify as external identification. The petitioner meets the standard for the 1900-1909 period.

### 1910-1919

In the 1910 Federal census, the census enumerator identified fourteen residents under the “Indian Population” category for San Antonio Township, Monterey County. Unlike in the 1900 census, the enumerator specified the tribe of these Indians as “San Antonio.” Moreover, several of these residents were included on the 1905-06 Kelsey census at Milpitas. In previous findings, including the 1997 Match-e-be-nash-she-wish Band Proposed Finding, the DOI has accepted Federal census records if they identify an Indian entity.<sup>12</sup> In its 2002 Final Determination against the Ohlone/Costanoan Muwekma Tribe, the DOI offered further clarification, observing “that Federal census records have been used to meet this criterion when they specifically listed individuals are part of an ‘Indian colony’ or an ‘Indian village,’ that is, as an entity rather than simply as individuals.”<sup>13</sup> In its 2007 Proposed Finding against the Juaneño Band of Mission Indians (#84B), the DOI found that even though the census enumerated several individuals as “San Juan Capistrano” Indians under a separate section entitled “Special Inquires Relating to Indians,” the enumerations “identified individuals, but did not identify those individuals as constituting a group or settlement.”<sup>14</sup> The question here is whether the enumerator’s use of the term “San Antonio” for the tribal group is sufficient or whether the Department’s precedents demanding the inclusion of words such as “Indian village” or “Indian colony” will carry the day in deciding whether this meets the standard as positive evidence for criterion § 83.11(a). The petitioner makes the

<sup>10</sup> STMSLO, 2024 Petition, pp. 44-45 of pdf.

<sup>11</sup> STMSLO, 2024 Petition, pp. 45-46 of pdf.

<sup>12</sup> U.S. Department of the Interior, Office of Federal Acknowledgment, Proposed Finding, Match-e-be-nash-she-wish Band of Pottawatomis Indians of Michigan 1997, p. 4.

<sup>13</sup> U.S. Department of the Interior, Office of Federal Acknowledgment, Final Determination, Ohlone/Costanoan Muwekma Tribe, 2002, p. 43.

<sup>14</sup> U.S. Department of the Interior, Office of Federal Acknowledgment, Proposed Finding, Juaneño Band of Mission Indians (#84B), 2007, p. 37.

case that the instructions for enumerators directed them to identify the tribe if possible, and that the enumerator did so. The DOI has argued in the past that identification on the census must clearly be of a distinct entity [apparently at a particular location], and that use of a term such as “San Juan Capistrano” or, in this case, “San Antonio” was identification of individuals rather of a tribal entity. The Department’s precedents appear to argue that the 1910 census does not qualify as identification of an Indian entity.

J. Alden Mason produced two articles in the 1910s based on his investigation of the Salinan Indians, including visits in 1910 and 1916. In *“The Ethnology of the Salinan Indians,”* Mason identifies two “members of the [Salinan language] stock, Perfecta Encinalas of the San Miguel, and José Cruz of the San Antonio division” and observes that the “all the basketry is the product of one woman, Perfecta Encinales, the oldest woman of the Salinan stock, and of her several daughters.”<sup>15</sup> While the identification of individuals is not sufficient to meet the criterion, Mason later clearly refers to Perfecta Encinales as “the oldest woman of the tribe.”<sup>16</sup> This qualifies as an external identification of an Indian entity.

Mason’s 1918 paper entitled, *“The Language of the Salinan Indians,”* describes his work on the language, and his visits to the area. Mason refers to a September 1910 visit to “the neighborhood of the old Mission of San Antonio in Monterey County, where live a few remaining members of this group. Here a little work was done with the oldest members of each of the two divisions, José Cruz of the Antoniaño and Perfecta Encinales of the Migueleño dialect.”<sup>17</sup> Mason’s reference to “this group” is to what he calls “the Salinan linguistic group,” rather than an Indian entity.<sup>18</sup> Mason later visited the Jolon region and worked with other “linguistic informants” such as David Mora and Maria Ocarpia.<sup>19</sup> Here, the article fails to identify a Salinan Indian entity, but instead identifies individuals. 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 “the identification of individuals as Indians is not sufficient to meet the criterion, which requires the identification of an Indian entity.”<sup>20</sup> Mason also wrote that he acquired mythological texts from Maria Ocarpia, who he identified as “an elderly woman living at the ‘reservation’ at the foot of Santa Lucia Peak, a little north of the San

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<sup>15</sup> J. Alden Mason, “The Ethnology of the Salinan Indians,” in *University of California Publications in American Archaeology and Ethnology*, vol. 10, no. 4, December 1912, pp. 99, 143.

<sup>16</sup> *Ibid.*, p. 143.

<sup>17</sup> J. Alden Mason, “The Language of the Salinan Indians,” in *University of California Publications in American Archaeology and Ethnology*, vol. 14, no. 1, January 1918, p. 4.

<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.*

<sup>20</sup> U.S. Department of the Interior, Office of Federal Acknowledgment, Final Determination, Ohlone/Costanoan Muwekma Tribe, 2002, p. 29.

Antonio Mission.”<sup>21</sup> Again, Mason’s identification of Ocarpia is of an individual, rather than of a tribal entity, and his reference to the ‘reservation’ is of a place where Ocarpia and others live, and not of a tribal entity. Mason’s 1918 article does not qualify as positive evidence.

The October 5, 1910, article in *The San Francisco Call* described Mason’s work and identified “a series of utensils and baskets” as made by “the tribe” of “Indians of this Monterey region, who used to be attached to the San Antonio and San Miguel missions.” This also qualifies as external identification of an Indian entity.

In Charles Kelsey’s 1910 map entitled “Map of California Showing Location of Indians,” he included drawings of Monterey and San Luis Obispo Counties. As in the 1905-1906 census, there are no rancherias identified in San Luis Obispo County, presumably for the same reason that none were included in the census. In Monterey County, he identified four Indian rancherias and included the number of the Indians “in the district of which the place named is the center.”<sup>22</sup> As the petitioner asserts, this suggests that he was not naming the settlements but instead geographical centers of a cluster of Indian residents. Nonetheless, Kelsey’s 1910 rancherias vary somewhat from his 1905-1906 census. While two are identified in both documents, Pleyto and Milpitas, the rancherias of Sur and Mansfield disappear in 1910 and are replaced by Monterey and Jolon. While Kelsey states that the names correspond to districts rather than settlements, the discrepancies beg questions of which district included which settlement from the census conducted just four years before. On the 1910 Kelsey Map, Jolon is marked as quite close to Mission San Antonio. The petitioner argues that the map conflates Jolon with Mansfield; however, based on the fact that Mansfield was in a rugged area closer to the coast in the Big Sur region of the county, it seems more likely that Kelsey inserted Milpitas in place of Mansfield on the map and placed Jolon to the north of the Mission (instead of Milpitas) instead of to the south while Milpitas should be just to the northwest of the Mission (where Jolon is on the map). Moreover, the petitioner claimed only Indians in the Mansfield and Milpitas settlements for the census. None of the Indian families identified in Pleyto from the census are recognized as members by the petitioner, and the petitioner speculates that the 50 Indians at Monterey were connected to the San Carlos or San Juan Bautista Missions. At best, the 1910 map identifies two districts or clusters, Milpitas (perhaps Mansfield in the census) and Jolon (perhaps Milpitas in the census), where Salinan Indians had resided around 1905-1906 and probably continued to do so.

The remaining evidence does not support the petitioner’s application. In his 1913 Final Report to the Commissioner of Indians Affairs, Charles Kelsey comments that

<sup>21</sup> J. Alden Mason, “The Language of the Salinan Indians,” in *University of California Publications in American Archaeology and Ethnology*, vol. 14, no. 1, January 1918, p. 59.

<sup>22</sup> STMSLO, 2024 Petition, p. 47 of pdf.

the landless Indians in California generally resided in small settlements or rancherias. He does not identify a Salinan tribal entity. While the petitioner cites the 1914 Asbury Report to the Commissioner of Indian Affairs as evidence, the petitioner admits that Asbury did not mention their group. The Asbury report does not qualify as evidence of external identification of an Indian entity.

The petitioner cites six Homestead Act applications for Encinales family members and a map of land acquired by the Encinales family based on those 1862 Homestead Act application as evidence. The petitioner only dates one of these applications, that of Eusebio Encinales in 1892. It is unclear if the other documents date from 1910 to 1919, and none appears to identify the applicant as a member of the petitioner or an antecedent entity. Instead, the petitioner argues that they should be understood in combination with the 1910 Federal census records as proof of the existence of “a very specific group of Indians located in a very isolated and remote geographic area near the San Antonio Mission.”<sup>23</sup> None of these documents identifies the petitioner as an Indian entity, and at least one is not contemporary to the 20<sup>th</sup> century. Furthermore, even if some do date from the 1910-1919 period, they are applications from individuals and not an Indian entity.

The petitioner provides two pieces of evidence, Mason’s 1912 article and the 1910 article from *The San Francisco Call*, that qualify as external identifications of an Indian entity. The 1910 map may do so since it specifically identifies Jolon and Milpitas as Indian rancherias, or the center of clusters of Indian residents, and although the names and locations provided are somewhat confusing, they roughly align with known Salinan communities. There is no evidence, however, of a Salinan tribal entity in San Luis Obispo County. The petitioner meets the standard for the 1910-1919 period in Monterey County.

### 1920-1929

The 1923 Superintendent’s Annual Narrative and Statistical Report of the Reno Indian Agency from James E. Jenkins provides a list of “Indians in California under this jurisdiction but not occupying Government lands.”<sup>24</sup> Under the heading of Monterey County, Superintendent Jenkins reported an estimated population of 125 within the communities of “Monterey, Jolon, etc.”<sup>25</sup> While the petitioner interprets this list as incomplete and surmises that Jenkins omitted the communities of Milpitas and Pleyto, it is impossible to know what the Superintendent elected not to include. In its 2001 Proposed Finding to decline acknowledgment of the Ohlone/Costanoan Muwekma Tribe, the DOI stated that:

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<sup>23</sup> STMSLO, 2024 Petition, p. 75 of pdf.

<sup>24</sup> STMSLO, 2024 Petition, pp. 49-50 of pdf.

<sup>25</sup> STMSLO, 2024 Petition, p. 50 of pdf.

There is no documentation in the record to reveal what sources the Reno or Sacramento Agencies relied upon in making these 1923 and 1927 statements, but it appears that they merely repeated information from Kelsey . . . Although apparently relying upon outdated information from their files, rather than upon personal knowledge, these BIA agencies identified a community or band of Indians.<sup>26</sup>

As evidence of external identification, the 1923 report identifies communities or bands of Indians at Monterey and Jolon in Monterey County. It does not seem that Monterey is a predecessor of the petitioner. The petitioner argues that Monterey is an unrelated rancharia perhaps associated with San Carlos or San Juan Bautista Missions. Jolon is not mentioned in the Kelsey census; however, it is included on his 1910 map and could include the actual Milpitas settlement or a group living near the San Antonio Mission. Moreover, the 1923 report does not identify these two bands of Indians as Salinan. Without more evidence, it is unclear whether the report identifies a tribal entity that is an antecedent of the petitioner.

In 1927, Superintendent L.A. Dorrington reported to the Commissioner of Indian Affairs that his office estimated the Indian population of San Luis Obispo County as numbering 45 and of Monterey County at “approximately 79 persons,” including 26 at Pleyto, 25 at Jolon, and 8 at Milpitas. Dorrington identified the Pleyto, Jolon and Milpitas groups as bands that either “are not in need of any home site” or “do not require land for home site.”<sup>27</sup> Using the Department’s reasoning in its 2001 Proposed Finding to decline acknowledgment of the Ohlone/Costanoan Muwekma Tribe, the petitioner argues that the Milpitas group was likely 28, rather than 8, since that would be consistent with the 1910 Kelsey Map and Dorrington’s initial population of 79 for the county. In that 2001 Proposed Finding, the DOI found that despite the likelihood that the agency repeated information from Kelsey rather than conducted its own investigation, the Dorrington report qualified as external identification. Thus, the 1927 report identifies bands of Indians at Pleyto, Jolon, and Milpitas in Monterey County. It does not appear that all three bands are predecessors of the petitioner. Of the three, only the Milpitas band is clearly identified as of the petitioner’s tribal group and documented in the petition, though as we have seen, there are discrepancies between the Kelsey census and the Kelsey map.<sup>28</sup> However, the petitioner appears to claim Jolon and Pleyto as well, even though it fails to argue that the families identified in Pleyto in the Kelsey 1905-1906 census were part of its tribal group.<sup>29</sup>

<sup>26</sup> U.S. Department of the Interior, Office of Federal Acknowledgment, Proposed Finding, Ohlone/Costanoan Muwekma Tribe, 2001, p. 72.

<sup>27</sup> STMSLO, 2024 Petition, pp. 50-52 of pdf.

<sup>28</sup> STMSLO, 2024 Petition, pp. 45-46 of pdf.

<sup>29</sup> STMSLO, 2024 Petition, pp. 51-52 of pdf.

The remaining evidence does not support the petitioner's application. The July 16, 1921, article in the *Oakland Tribune* identifies Dona Perfecta and her four children, including Pedro Ensenal, as "full-blooded Mission Indians" of "the great tribe of Indians that swarmed the valleys more than 150 years ago" and makes no mention of a contemporaneous Indian entity.<sup>30</sup>

The petitioner provides two related sources regarding J.P. Harrington's notes: a 1985 collection of his papers entitled, "*The Papers of John Peabody Harrington in the Smithsonian Institution, 1907-1957, Volume 2*," and his notes on microfilm from the Smithsonian's National Anthropological Archives. Ethnologist J.P. Harrington's field notes from his visits in 1922 and 1930-1932 to the area describes several Indian individuals and their associations; however, none of these notes identify a Salinan Indian entity in the 20th century. In its 2001 Proposed Finding to decline acknowledgment of the Ohlone/Costanoan Muwekma Tribe, 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).<sup>31</sup>

The 1993 journal article, "*Walking Along Deer Trails: A Contribution to Salinan Ethnography Based on the Field Notes of John Peabody Harrington*," asserts that "a community of Salinan speakers re-established themselves [at "The Indians"] after the secularization of Mission San Antonio in 1834, and that anthropologists "began visiting this community in the late nineteenth century." That work "continued well into the early part of the twentieth century."<sup>32</sup> Much of the rest of the article describes J. Alden Mason's work in the 1910s and Harrington's investigations in 1922 and the early 1930s. This article is a summary of the anthropological work on Salinan speakers in the past. Moreover, since the article was published in 1993, it is not a contemporaneous identification of an Indian entity.

While the petitioner cites Alfred Kroeber's 1925 *Handbook of the Indians of California* as evidence of identification of the petitioning group for the 1900s and 1910s, the source belongs in the 1920s. Kroeber questioned whether a Salinan group existed. He wrote that:

<sup>30</sup> STMSLO, 2024 Petition, p. 85 of pdf.

<sup>31</sup> U.S. Department of the Interior, Office of Federal Acknowledgment, Proposed Finding, Ohlone/Costanoan Muwekma Tribe, 2001, p. 11.

<sup>32</sup> STMSLO, 2024 Petition, pp. 72-73 of pdf.

“The Salinan Indians are one of those bodies of natives whom four generations of contact with civilization have practically extinguished. Some 40 remain, but among these the children do not speak the language, and even the oldest retain only fragmentary memories of the national customs of their great-grandfathers. Missionaries and explorers happen to have left only the scantiest notices of the group; and thus it is that posterity can form but a vague impression of their distinctive traits.”<sup>33</sup>

Kroeber’s use of the term “group” appears to refer to one of the past as the days of California explorers were over. Kroeber does not identify a contemporary Indian entity.

The 1929 book, *San Antonio de Padua: The Mission in the Sierras*, describes the interest of Dona Perfecta Encinal and her sons in the restoration of the San Antonio Mission. The book identifies Ms. Encinal as an “old Indian woman.” 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 “the identification of individuals as Indians is not sufficient to meet the criterion, which requires the identification of an Indian entity.”<sup>34</sup>

The petitioner cites several documents within Case No. 9266 of the *Luigi Marre Land & Cattle Company v. Raymond Rosas, Jose Baylon, and Maria Baylon*. The petitioner describes these as a lawsuit to have the defendants evicted from their homes at Toro Creek. Without access to the documents themselves, we cannot determine if they refer to a Salinan tribal entity; however, it is revealing that the petitioner makes no such case in its petition. The 1929 documents appear to refer to individuals rather a tribal entity.

The December 2, 1929, meeting minutes of the San Luis Obispo Board of Supervisors, the two articles in the *San Luis Obispo Daily Telegram* (December 3, 1929; and December 11, 1929), and a December 9, 1929, letter to the editor in the *San Luis Obispo Daily Telegram* describe an attempt to seek assistance for three Indians living on the Luigi Marre Ranch who were to be evicted. While the December 3, 1929, article named the three men and described them as “original Mission Indians and that they had been on their location in the Marre ranch for over 60 years,” none of these four sources identified an Indian entity. 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

<sup>33</sup> STMSLO, 2024 Petition, pp. 29-31 of pdf.

<sup>34</sup> U.S. Department of the Interior, Office of Federal Acknowledgment, Final Determination, Ohlone/Costanoan Muwekma Tribe, 2002, p. 29.

that “the identification of individuals as Indians is not sufficient to meet the criterion, which requires the identification of an Indian entity.”<sup>35</sup>

The December 18, 1929, article in the *San Luis Obispo Daily Telegram* describes the concern of a local community with the “the trouble between Mr. Marre and the Indians of Toro Creek.”<sup>36</sup> Although the article identifies “the Indians of Toro Creek,” it is clear from the petitioner’s description of this episode and from other documents that the Indians being referred to are three individuals, rather than a tribal entity.

The petitioner provides one piece of evidence, the 1927 Dorrington report, that qualifies as an external identification of an Indian entity. It is unclear whether the 1923 Reno agency report qualifies as one of the two bands it identifies, Monterey, is not antecedent to the petitioner and the other, Jolon, corresponds in some ways to the petitioner but not in others. The petitioner meets the minimum standard for the 1920-1929 period.

### 1930-1939

The petitioner cites four separate documents produced by the Toro Creek Indians in the 1930s. These materials are: a February 1934 set of Toro Creek Indians By-Laws; and three sets of Toro Creek Indians meeting minutes from February 1935, February 1938, and September 1939. The petitioner asserts that the By-Laws include a list of tribal members with minor children, and that the meeting minutes identified tribal leaders and included discussion of the needs of its members and actions to be taken. These four documents qualify as identification of a tribal entity.

The February 10, 1933, article in *The Rustler* describes Felipe Encinales as “one of the few remaining Indians of the San Antonio Mission Tribe” and qualifies as external identification of an Indian entity.<sup>37</sup>

A February 25, 1935, article in the *San Luis Obispo Daily Telegram* describes the efforts of the Federal Government and private citizens to assist “the Toro Creek Indians” in obtaining title to their land. The article clearly identifies “the Toro Creek Indians” as a “small band of Indians” that lived on land “they have occupied since the coming of the white man.”<sup>38</sup> This article identifies an Indian entity.

The petitioner provides six newspaper articles dating from December 1936 reporting on the death of Maria de Los Angeles Baylon Ocarpia Encinales as

<sup>35</sup> U.S. Department of the Interior, Office of Federal Acknowledgment, Final Determination, Ohlone/Costanoan Muwekma Tribe, 2002, p. 29.

<sup>36</sup> STMSLO, 2024 Petition, p. 90 of pdf.

<sup>37</sup> STMSLO, 2024 Petition, p. 103 of pdf.

<sup>38</sup> STMSLO, 2024 Petition, p. 120 of pdf.

evidence. Four of these articles (*San Luis Obispo Daily Telegram*, 12/1/1936; *The Los Angeles Times*, 12/2/1936; *The Fresno Bee*, 12/3/1936; *The Pismo Times*, 12/4/1936) identify Ms. Encinales as a member of the San Miguel tribe of Indians, one of the antecedent groups of the petitioner. The December 12, 1936, article in *The Los Angeles Times* identifies the deceased as a Jolon Indian but does not explicitly identify an Indian entity. The December 9, 1936, article in *The Californian* identifies the deceased as “one of the last remaining pure Digger Indians . . . who spoke the mild, soft language of the tribe, which inhabited the Jolon area before the coming of white men.”<sup>39</sup> The term “Digger Indians” was a derogatory term applied to Natives throughout California and the Great Basin, and is not specific to the petitioner. The article does not identify a contemporary Indian entity in the 1930s. Of the six articles, four, however, identify an Indian entity and qualify as evidence.

The petitioner provides five newspaper articles dating from 1933-1934 concerning Eusebio “Tito” Encinales and his death in 1934 as evidence. The first, a January 19, 1933, article in *The Californian*, identifies Tito Encinales as “one of three surviving California Indians who were turned out of their home at Mission San Antonio” and that “Tito and his two brothers are said to be the only surviving Indians who speak the ancient language of the San Antonio tribe.”<sup>40</sup> The identification of Encinales as a California Indian is insufficient to meet the requirements of criterion (a). In addition, the article does not clearly identify a contemporary Indian entity in its description of Encinales as a speaker of the language of the San Antonio tribe. Similarly, the May 11, 1934, article in the *Salinas Morning Post* does not identify a contemporary Indian entity when it describes Encinales as “the last of the Jolon Mission Indians.”<sup>41</sup> The other three articles, on the other hand, identify Encinales as member of an existing tribal entity. The May 24, 1934, article in the *Salinas Morning Post* identifies him as “a member of the Antonian branch of the Matsun tribe,” the May 25, 1934, article in *The Californian* calls him “one of the few remaining members of the Mutsun Indian tribe,” a tribe who lived “in the vicinity of the San Antonio Mission,” and the June 2, 1934, article in *The Morning Union* identified Encinales as “one of the few remaining Mutsun Indian tribe.”<sup>42</sup> As the petitioner argues, while these sources misidentify the tribal entity, it seems clear that they are both identifying a contemporary tribal entity and referring to the petitioner’s predecessor group from the San Antonio Mission.

Two articles in *The Salinas Daily Post* are provided as evidence: from May 24, 1934, and from June 10, 1936. The May 24, 1934, article describes Eusebio Encinales as “a member of the Antonian branch of the Matsun tribe” and “a member of the family

<sup>39</sup> STMSLO, 2024 Petition, pp. 116-117 of pdf.

<sup>40</sup> STMSLO, 2024 Petition, p. 113 of pdf.

<sup>41</sup> STMSLO, 2024 Petition, pp. 113-114 of pdf.

<sup>42</sup> STMSLO, 2024 Petition, pp. 113-115 of pdf.

that are the last pure-bred representatives of the Jolon Indians.” It also observed that his wife, Maria de los Angeles, “was of the Miguelenyo (sic) tribe.”<sup>43</sup>

The June 10, 1936, article identifies Dolores Encinales [who happened to be Eusebio’s brother] as “the last of the once numerous Matsun tribe which inhabited the Jolon region when the Spanish padres built San Antonio de Padua mission 165 years ago.”<sup>44</sup> The common trope of reporting on deceased or aged Indians as the last of their tribe is often incorrect, and should not obscure the positive identification found here. Furthermore, as the petitioner observes, in the DOI’s 1996 Final Determination against acknowledgement of the Ramapough Mountain Indians, Inc., the Department argued that the criterion “does not require that the identification as an Indian entity was factually accurate.”<sup>45</sup> Thus, the fact that the articles describe the Encinaleses as members of the Matsun tribe is not disqualifying. The articles identify Eusebio and Dolores Encinales as members of a tribal entity and thus qualify as external identification of an Indian entity.

The remaining evidence does not support the petitioner’s application.

The petitioner offers five newspaper articles on the plight of three Indians from Toro Creek who were in danger of being evicted: a January 6, 1930, article in *The San Luis Obispo Daily Telegram*; two January 7, 1930, articles in *The San Luis Obispo Daily Telegram Tribune*; a January 11, 1930, article in *The San Luis Obispo Daily Telegram Tribune*; and an April 25, 1935 or 1937, obituary in *The San Luis Obispo Daily Telegram* for Jose Bylon. While the petitioner argues that the DOI’s determination of external identification of “a band of Cheboygan Indians” in its 2004 Proposed Finding on the Burt Lake Band of Ottawa and Chippewa Indians should apply to these newspaper articles, we believe that the two situations differ in a crucial way. In its 2004 Proposed Finding, the DOI found that two articles described a Burt Lake Indian entity as it called them “a band of Cheboygan Indians.”<sup>46</sup> In the five articles from the current petitioner, none of them clearly identify the three Bylons as a band or other entity. The January 6, 1930, article, the January 7, 1930, article entitled “Jan. 13 Set for Indians,” and the January 11, 1930, article all refer to the three as “the Indians,” with no additional description.<sup>47</sup> The January 7, 1930, article entitled, “Social and Club News, Paso Robles, Miscellaneous News Item,” refers to “the affair of the Indians of Toro Creek;” however, it is clear that this reference is to the three Bylons rather than a band.<sup>48</sup> The 1935 or 1937 obituary of Jose Bylon, one of the Bylons living at Toro Creek, observes that he was “one of the few native Indians left in San Luis Obispo County,” mentions his surviving

<sup>43</sup> STMSLO, 2024 Petition, p. 104 of pdf.

<sup>44</sup> STMSLO, 2024 Petition, p. 104 of pdf.

<sup>45</sup> U.S. Department of the Interior, Office of Federal Acknowledgment, Final Determination, Ramapough Mountain Tribe, Inc., 1996, pp. 12-13, 19.

<sup>46</sup> U.S. Department of the Interior, Office of Federal Acknowledgment, Proposed Finding, Burt Lake Band of Ottawa and Chippewa Indians, Inc, 2004, p. 30.

<sup>47</sup> STMSLO, 2024 Petition, pp. 108-110 of pdf.

<sup>48</sup> STMSLO, 2024 Petition, p. 109 of pdf.

relatives, his sister and Roman Roses, and refers to the efforts of county women's clubs in "guaranteeing the Indians [the remaining Bylons] a permanent home on the land claimed by the Marres."<sup>49</sup> None of these qualify as identification of an Indian entity.

The January 24, 1930, article in the *Santa Ynez Valley News* related that the federal government had offered to find homes for "four San Luis Obispo Indians who are about to be evicted."<sup>50</sup> The article goes on to identify the four: Jose Bylon, Mary Roses, Roman Roses, and Kleno Hill. This article clearly identifies the four as individuals and does not identify them as members of an Indian entity.

Gertrude Atherton's 1932 book, *Adventures of a Novelist*, describes the wrongful eviction of Indians from the Milpitas Land Grant in 1883. Atherton does not identify a contemporary Indian entity in her book.

Randell Milliken and John R. Johnson's 2005 book, *An Ethnogeography of Salinan and Northern Chumash Communities, 1769-1810*, is cited as supporting the petitioner's argument that as a consequence of the 1883 eviction from the Milpitas Land Grant, at least one family, that of Clara Encinales, would move to the Toro Creek/Tecolote area between Morro Bay and Atascadero, and that this location was also called the Juan de Los Reyes Ranch. The book also describes "an important placename trip into the earlier homelands" of an individual, Maria de los Angeles (Baylon), and two companions.<sup>51</sup> Milliken and Johnson's book was published in 2005 and the petitioner does not provide any indication that the book identifies an Indian entity, either in the 20<sup>th</sup> or the 21<sup>st</sup> centuries.

The petitioner cites several documents within Case No. 9266 of the Luigi Marre Land & Cattle Company v. Raymond Rosas, Jose Baylon, and Maria Baylon. The petitioner describes these as a lawsuit to have the defendants evicted from their homes at Toro Creek. Without access to the documents themselves, we cannot determine if they refer to a tribal entity; however, it is revealing that the petitioner makes no such case in its petition. The 1930 documents, including an affidavit and an amended answer of defendants, refer to the defendants as individuals and California Indians rather than as members of a tribal entity.

The petitioner argues that a series of documents from the 20<sup>th</sup> century provide evidence of criterion (a) in the 1900 to 1939 period. These materials include: a 1975 letter from Richard Krejsa, a declaration and attachment from a 1982 lawsuit, a 1901 homestead application for Edward Pierce, an undated map of the Toro Creek region likely from the 1980s, and a 1978 article in the *Atascadero News*. Of these, only the 1901 homestead application falls within the early 20<sup>th</sup> century, and that

<sup>49</sup> STMSLO, 2024 Petition, pp. 110-111 of pdf.

<sup>50</sup> STMSLO, 2024 Petition, p. 119 of pdf.

<sup>51</sup> STMSLO, 2024 Petition, pp. 57, 59-60 of pdf.

application, like the other homestead applications cited by the petitioner, does not identify a tribal entity. We will evaluate the others within their proper decade.

The April 28, 1950, article in *The Arroyo Grande Valley Herald Recorder* and the May 7, 1975, article in *The Five Cities Times Press Recorder* describe a 1950 visit to supposed ruins of an Indian village and claim that “the last of these [Jolon] Indians is said to have buried there 20 years ago.”<sup>52</sup> The 1975 article is a partial reprint of the 1950 article. While the petitioner alleges that the reference to “Jolon Indians” and a village settlement are relevant, the articles were published in 1950 and 1975, and do not identify a contemporary Indian entity.

The petitioner provides several pieces of qualifying evidence, including eleven newspaper articles and four documents produced by the entity itself. These pieces of evidence identify different geographically separate and named entities—that of the Toro Creek settlement in San Luis Obispo County and that related to the San Antonio Mission in Monterey County. The petitioner appears to meet the standard for the 1930-39 period.

#### 1940-1949

The petitioner cites two separate documents produced by the Toro Creek Indians in the 1940s. These materials are two sets of Toro Creek Indians meeting minutes from February 1940 and November 1947. The petitioner asserts that the meeting minutes identified tribal leaders and included discussion of the needs of its members and actions to be taken. These two documents qualify as identification of a tribal entity by the petitioner.

The April 9, 1949, article in *The Californian* describes Dolores Encinales as “among the last of the San Antonio Tribe.” This document identifies the petitioner as a contemporaneous Indian entity.

The petitioner provides two newspaper articles from June 1946 as evidence of identification of an Indian entity: a June 28, 1946, article in *The Californian* and a June 20, 1946, article in the *The Rustler-Herald*. Neither article identifies a contemporary Indian entity. The June 28, 1946, article briefly describes the area as a ranch on the Milpitas Land Grant and the Indians who lived there. The June 20, 1946, article refers to the area as “The Indians” but does not identify an active Indian settlement.

The May 21, 1949, photograph in *The Californian* shows two members of the Encinales family from a photo actually taken in 1889. That does not qualify as identification of a contemporary Indian entity. The caption identifies the two

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<sup>52</sup> STMSLO, 2024 Petition, pp. 106-107 of pdf.

members of the Encinales family as “Perfecta Encinales . . . [and] Mekela Encinales, a sister of Dolores Encinales of King City (one of the last of the Jolon Indians), and now lives in Mexico.”<sup>53</sup> The article does not clearly identify an existing Indian entity such as a tribe, group, or a band but instead identifies Dolores Encinales as a Jolon Indian in an article entitled “Near the Close of the Century in Jolon Area.” It may be describing him as an Indian from the Jolon area without identifying a distinct Indian entity.

The petitioner provides three pieces of qualifying evidence: two documents produced by the petitioner itself dating from 1940 and 1947, and a 1949 newspaper article identifying the San Antonio tribe. Similarly to the previous decade, these pieces of evidence identify different, geographically separate and named entities—that of the Toro Creek settlement in San Luis Obispo County and that related to the San Antonio Mission in Monterey County. The petitioner appears to meet the standard for the 1940-1949 period.

#### 1950-1959

The petitioner provides four articles from the 1950s referring to Dolores Encinales, and of the four, two qualify as identification of the petitioner’s entity and two do not. One of the September 12, 1953, articles in *The Californian* describes the history of “The Indians” and identifies Dolores Encinales as “among the last of the San Antonio Indian tribe.”<sup>54</sup> The other, entitled, “The Chuck Wagon, Dolores Encinales,” describes Mr. Encinales as “one of the few remaining survivors of the San Antonio Indian group.”<sup>55</sup> These two articles identify the petitioner as a contemporaneous Indian entity. The other two articles, also in *The Californian*, date from July 1954, and describe Mr. Encinales as “one of the last Mission Indians.”<sup>56</sup> The articles also related that he had been born on the Indians ranch and baptized; however, neither of the 1954 articles identify a contemporary Indian entity.

The petitioner cites a document entitled, “1954 Planning Meeting Notes, Toro Creek Indians,” that was produced by the Toro Creek Indians. The petitioner asserts that the December meeting minutes identified tribal leaders as well as included a discussion of the needs of its members and actions to be taken. This document qualifies as identification of an Indian entity by the petitioner.

A June 11, 1955, newspaper article in *The Californian* describes an upcoming fiesta and barbecue intended to honor San Antonio de Padua. The article observes that “Joe Mora, venerable member of the old Encinalis (sic) tribe that populated the

<sup>53</sup> STMSLO, 2024 Petition, p. 129 of pdf.

<sup>54</sup> STMSLO, 2024 Petition, p. 130 of pdf.

<sup>55</sup> STMSLO, 2024 Petition, p. 131 of pdf.

<sup>56</sup> STMSLO, 2024 Petition, pp. 132-133 of pdf.

Jolon area before the coming of the Franciscans” would be present.<sup>57</sup> The petitioner argues that the article should qualify as identification of an Indian entity despite its misidentification of the entity. It is unclear whether the article qualifies. On one hand, it identifies Mora as a member of an Indian tribe, and even though it misidentifies the tribe, the reference to the Encinaleses and to the existence of the group in the Jolon area indicate that it is referring to the San Antonio Mission group. On the other, the tribal reference could be of the past, rather than of a contemporary Indian entity.

Beatrice Casey’s 1957 book, *Padres and People of Old Mission San Antonio*, describes the contemporary local Indian population as “descended from San Antonio Mission Indians,” and discusses a few individuals, including Joe and David Mora.<sup>58</sup> However, it does not identify a current Indian entity and fails to qualify as evidence under the criterion.

The petitioner provides four newspaper articles, dated in May and June 1951, reporting on the sudden death of Augustine Mora. All four articles describe Mora as an Indian who was born to Indian parents at or near the San Antonio Mission reservation. However, none of these identify either an Indian entity or Mora as a member of such an entity.

The petitioner provides three pieces of qualifying evidence: a document produced by the petitioner itself dating from 1954, and two newspaper articles dating from September 1853 identifying a contemporaneous San Antonio tribe. Similarly to the previous decade, these pieces of evidence identify different, geographically separate and named entities—that of the Toro Creek settlement in San Luis Obispo County and that related to the San Antonio Mission in Monterey County. The petitioner appears to meet the standard for the 1950-1959 period.

## 1960-1969

The petitioner provides two newspaper articles from 1962 in *The Californian* that it asserts as meeting the criterion. In the July 20, 1962, article, Joe Mora is described as “probably the last of the full-blooded Indians” and someone who “spent most of his life in the San Antonio mission district.” Furthermore, the article reports that “his father belonged to the Encinales tribe.”<sup>59</sup> Three months later, on October 29, 1962, *The Californian* reported that Joe Mora had passed away and that he was “one of the few full-blooded Indians left in this valley.”<sup>60</sup> Neither article identified a contemporary Indian entity. They identified Mora as an Indian who lived in the

<sup>57</sup> STMSLO, 2024 Petition, p. 140 of pdf.

<sup>58</sup> STMSLO, 2024 Petition, pp. 134-135 of pdf.

<sup>59</sup> STMSLO, 2024 Petition, p. 141 of pdf.

<sup>60</sup> STMSLO, 2024 Petition, p. 141 of pdf.

area. Moreover, the July article identified a past group, “the Encinales tribe,” but did not state that Mora belonged to the tribe or that it endured into the 1960s. These two articles do not qualify as evidence under the criterion.

The November 2, 1969, letter from Bessie Martin to Edward Pierce provides substantial evidence for the continued existence of the petitioner in the 1960s. First, the letter identifies a Toro Creek Indians group and includes a recent mailing list for that group. Next, it refers to an event two decades earlier where “everybody” received money. The petitioner surmises that this refers to efforts to help “members of the Toro Creek Indians receive compensation under the California Revised Roll of California Indians of 1955, authorized in 1948.” While there is no additional evidence proving this, the petitioner’s assumption rings true. The letter also discusses voting in 1964 and how “we all kept in touch to help answer questions.”<sup>61</sup> The petitioner argues that this refers to voting concerning the Indians of California settlement in 1964. Last, the letter indicates that there will be another meeting, presumably of the Toro Creek Indians, and that they should discuss the matter further. This letter is qualified as identification of an Indian entity by the petitioner and is strong evidence of the existence of at least one antecedent segment of the petitioning entity in 1969. Furthermore, it indicates that the Toro Creek Indians had likely communicated and met on other occasions other than those demonstrated by meeting minutes in the 1940s and 1953.

Due to the 1969 letter, the petitioner meets criterion (a) for this decade.

#### 1970-1979

The petitioner provides three sources as evidence for this decade: a 1975 letter from Richard Krejsa, Chairman of the San Luis Obispo County Board of Supervisors, to Edward Pierce; a November 1978 newspaper article; and a November 1979 newspaper article. The 1975 letter from Chairman Krejsa to Edward Pierce refers to the efforts of the Toro Creek Indians to secure permanent access to a tribal cemetery that was located on private property. In the letter, Chairman Krejsa, in his capacity as a local government official, clearly identifies the Toro Creek Indians and refers to them as a tribe.<sup>62</sup> The November 24, 1978, newspaper article in the *Atascadero News* describes the origin of the Toro Creek Indian group, the controversy over access to the group’s cemetery, and includes several quotes from Les Peirce. There are references to the Toro Creek Indians in the article; however, some are clearly identifying a historical group rather than a contemporary entity. For instance, the references to the 1929 eviction and the fact that “the Toro Creek Indian settlement is not accessible to the public” do not evince a contemporary Indian entity but a historical one. Moreover, the article describes Les Pierce as “one

<sup>61</sup> STMSLO, 2024 Petition, pp. 143-144 of pdf.

<sup>62</sup> STMSLO, 2024 Petition, pp. 145-146 of pdf.

of the few remaining Toro Creek Indians” and as “a Toro Creek Indian.” These identifications are that of an individual, rather than a tribal entity.<sup>63</sup> Similarly, the November 8, 1979, article in the *San Luis Obispo Telegram-Tribune* describes a historic “Indian village” at Toro Creek; in fact, Les Pierce refers to it in the past tense in the article when he describes it: “The village was about a quarter mile from where the Paradise Café is.”<sup>64</sup> Elsewhere in the article, Pierce and his mother are described as Salinan, but there is no reference to an existing tribal entity.

Thanks to the 1975 letter, the petitioner appears to meet the requirements for evidence within criterion (a) for the 1970s.

### 1980-1989

The petitioner provides three sources as evidence for this decade: a 1980 newspaper article; court documents from a lawsuit filed in 1982 by Dick Pierce against San Luis Obispo County Board of Supervisors, Kern County Land Co., and Tennaco; and a 1992 letter from Dick Pierce to his uncle, Edward Pierce. The August 1980 article in the *San Luis Obispo County Telegram-Tribune* describes the continued fight over land and access rights to gravesites of the Toro Creek Indians burial site. The article refers to Dick Pierce’s ancestors from the late 1920s as “three aging Salinan Indians.” It then cites a representative of Tenneco West as indicating that “he would discuss the situation only with the Indians, not with the press.” Pierce is later quoted as referring to “our Indian people” and “the Indian people.”<sup>65</sup> Nowhere in this article is there a clear identification of a contemporary Indian entity, Salinan or otherwise.

In November 1982, Dick Pierce filed a lawsuit against San Luis Obispo County Board of Supervisors, Kern County Land Co., and Tennaco West. The petitioner alleges that the lawsuit and a declaration and notes from Robert Gibson, an archaeologist, qualifies as evidence under the criterion. However, none of the documents cited identifies a contemporary Indian entity. Instead, there are references to an archaeological site containing gravesites in Toro Creek Canyon. Moreover, the lawsuit was filed by Pierce, rather than a Salinan or Toro Creek tribal entity. These documents do not qualify as evidence under criterion (a).

The November 14, 1992, letter from Dick Pierce to Edward Pierce should not contribute to the evidence for the 1980s since it was written in the 1990s.

The evidence presented for the 1980s does not meet criterion § 83.11(a).

<sup>63</sup> STMSLO, 2024 Petition, pp. 147-148 of pdf.

<sup>64</sup> STMSLO, 2024 Petition, pp. 150-151 of pdf.

<sup>65</sup> STMSLO, 2024 Petition, pp. 153-155 of pdf.

### 1990-1999

The petitioner provides only one source as evidence for this decade: a 1992 personal note and photo from Dick Pierce to his uncle, Edward Pierce. In the note, Dick Pierce refers to the presumably recent funeral of Adrian Pierce and a conversation that Dick and Edward had after the ceremony. He then writes, "I wish things could have been different 10 years ago with Toro Creek for our Tribe."<sup>66</sup> The petitioner argues that the event of 10 years before was the lawsuit filed by Dick Pierce in 1982. Although that seems likely, there is no evidence provided with which to corroborate this speculation. The lawsuit was filed by Pierce, rather than a Salinan or Toro Creek tribal entity. The petitioner also argues that Dick Pierce's usage of "with Toro Creek for our Tribe" suffices as identification of an Indian entity by the petitioner. It is unclear whether this is enough to meet the criterion under the new 2015 regulations. This single sentence does not clearly identify the petitioner's Indian entity; however, Pierce had identified himself as a Salinan and Toro Creek Indian in other documents, he was an active participant in the Toro Creek Indian group as documented in meeting minutes in previous decades, and he appears to refer to that group in the note. It is unclear whether the reference to "our Tribe" is contemporary to the 1990s or refers to it in the early 1980s. This note may meet the minimum standard for evidence in the 1990-1999 period but the petitioner's case would be strengthened with additional evidence, particularly since the evidence presented for the 1980s does not meet the criterion.

### 2000-2009

The petitioner offers four sources for evidence of this decade: a 2001 note from Hilda May Carpenter to Toni Jean Woody; a 2004 letter from Larry Myers, Executive Secretary, State of California Native American Heritage Commission, to Nick Franco, Coastal Sector Superintendent of the San Luis Obispo Coast District, Morro Bay State Park, State of California; an 2006 news release from the State of California Department of Parks and Recreation; and an 2006 Memorandum of Agreement between the State of California Department of Parks and Recreation, the San Luis Obispo Coast District, and The Salinan Tribe of Monterey and San Luis Obispo Counties.

The May 26, 2001, note from Hilda Carpenter to Toni Woody indicates that members of "the Toro Creek Indians" were engaged in an effort to combine with "the others" to create a "new Salinan Indian Tribe."<sup>67</sup> Presumably, Ms. Carpenter, her father, and Ms. Woody were all members of the Toro Creek Indians. Without access to tribal records, we cannot confirm that. Apparently, Carpenter also included

<sup>66</sup> STMSLO, 2024 Petition, pp. 158-159 of pdf.

<sup>67</sup> STMSLO, 2024 Petition, pp. 160-161 of pdf.

applications for the Salinan Indian Tribe, but the petitioner does not cite them and perhaps did not add them to its petition. The petitioner's interpretation of this note is somewhat different than the note's text; the petitioner states that the Toro Creek Indians joined "the Salinan Indian Tribe to continue the tribal entity." The note, however, does not clearly identify the group that the Toro Creek Indians are joining or whether it was an existing Indian entity. Carpenter implies that it was being created. The likeliest interpretation is that the Toro Creek Indian group in fact joined an existing tribal entity, the Salinan Tribe of Monterey and San Luis Obispo Counties. It is striking how little information is provided of this significant act. At best, the note identifies "the Toro Creek Indians" and qualifies as identification of an Indian entity by the petitioner itself.

In 2004, Larry Myers, Executive Secretary, State of California Native American Heritage Commission, wrote to Nick Franco, Coastal Sector Superintendent of the San Luis Obispo Coast District, Morro Bay State Park, State of California, requesting "access to the summit of Morro Rock for the traditional winter solstice ceremonies by the Salinan Tribe of Monterey and San Luis Obispo Counties."<sup>68</sup> This letter may indicate a relationship with a State government based on identification of the petitioner as a tribal entity, though it is unclear what status the petitioner had with the State in 2004.

In 2006, the State of California Department of Parks and Recreation issued a news release announcing that officials from the State of California and the California Native American Heritage commission, Elders of the Santa Ynez Band of Chumash Indians, and members of the Salinan Tribe of Monterey, San Luis Obispo, and San Benito Counties would gather in March "to finalize an agreement allowing Salinan tribal members access to the summit of Morro Rock for religious purposes."<sup>69</sup> The document appears to indicate a relationship with a State government based on identification of the petitioner as an American Indian entity.

In 2006, the State of California Department of Parks and Recreation, the San Luis Obispo Coast District, The Santa Ynez Band of Chumash Indians, and The Salinan Tribe of Monterey and San Luis Obispo Counties signed a Memorandum of Agreement allowing tribal members to climb Morro Rock as part of a religious ceremony. The petitioner argues that this agreement reflects the identification of the State of California of their group as an Indian entity and that as a consequence of that identification and the California Public Resources Code, the State has granted the petitioner "special privileges to an ecological reserve that is closed to public access."<sup>70</sup> We contend that the 2006 agreement was primarily with the Santa Ynez Band of Chumash Indians, and that the petitioner was an additional gratuitous party. Furthermore, the petitioner did not include images from the

<sup>68</sup> STMSLO, 2024 Petition, p. 165 of pdf.

<sup>69</sup> STMSLO, 2024 Petition, p. 165 of pdf.

<sup>70</sup> STMSLO, 2024 Petition, p. 165 of pdf.

Agreement in its petition. Instead, the petitioner provides an image from the first page of a 2018 agreement and asserts that the language in the 2006 agreement is similar. We question whether it meets the criterion.

The current petitioner is identified as an American Indian entity in four pieces of evidence: as the Toro Creek Indians in 2001 and as the Salinan Tribe of Monterey and San Luis Obispo Counties from 2004 on. However, the petitioner alleges that three of these four documents demonstrate a relationship with a State government based on identification of the petitioner as an American Indian entity: the 2004 letter, a 2006 press release and a 2006 Agreement. It is unclear what status the petitioner had with the State in 2004, we question the petitioner's interpretation of the 2006 Agreement, and the 2006 press release refers to the 2006 Agreement. The petitioner includes at least one additional newspaper article in its submission, a December 2003 article from *The San Luis Obispo Tribune*, that identifies "the Salinan Indian tribe."<sup>71</sup> The petitioner appears to meet the minimum requirements of the criterion for this decade.

#### 2010-2019

The petitioner offers the following sources for evidence of this decade: three separately dated versions of a Memorandum of Agreement between the State of California Department of Parks and Recreation, the San Luis Obispo Coast District, and The Salinan Tribe of Monterey and San Luis Obispo Counties, and signed annual Special Event Permits from the State of California for all ten years of the decade.

There are three different versions (2011, 2014, and 2018) of a Memorandum of Agreement between the State of California Department of Parks and Recreation, the San Luis Obispo Coast District, and The Salinan Tribe of Monterey and San Luis Obispo Counties. The petitioner argues that these agreements reflect a relationship with a State government based on identification of the petitioner as an American Indian entity, and that as a consequence of that identification and the California Public Resources Code, the State has granted the petitioner "special privileges to an ecological reserve that is closed to public access."<sup>72</sup> The 2018 agreement identifies the petitioner as an American Indian entity; the petitioner asserts that the language in the 2011 and 2014 agreements is similar.

There are also several signed annual Special Event Permits from the State of California from 2010 to 2019 for the implementation of the Memorandum of Agreements. The petitioner did not include citations or images from the permits in its petition, so we cannot evaluate them against the criterion.

<sup>71</sup> STMSLO, 2024 Petition, p. 283 of pdf.

<sup>72</sup> STMSLO, 2024 Petition, p. 165 of pdf.

The Memorandums of Agreement appear to meet the criterion, though we can only confirm the 2018 Agreement since that is the only version with a publicly available page. While the petitioner only provided these sources as evidence for the decade, there are several others available to use that the petitioner did not employ. A perfunctory internet search revealed other articles from the news media that qualify as external identification of the Salinan tribal entity. Furthermore, the petitioner has produced monthly newsletters since 2009 that are available on its website. The petitioner has evinced or likely will demonstrate the external identification of the petitioner's tribal entity for the period of the 2010s.

#### 2020-2024

Five nearly identical sources are provided as evidence for the 2020s—signed annual Special Event Permits from the State of California for the implementation of the Memorandum of Agreements. The petitioner did not include citations or images from the permits in its petition, so we cannot evaluate them against the criterion. However, even if the permits are set aside as evidence, there are several others available to use that the petitioner did not employ. For example, the petitioner has produced monthly newsletters since 2009 that are available on its website. Thus, even though it is uncertain whether the evidence in the 2024 petition will meet the minimum standard for criterion (a), the petitioner will likely do so with an addendum including supplementary evidence.

#### Conclusion

The majority of the external identifications through 1975 cited by the petitioner refer to its origins at the San Antonio Mission and, to a lesser extent, at the San Miguel Mission until the 1920s and 1930s when the Toro Creek group emerges. We have evaluated the petitioner's evidence as if those groups represent the petitioner until a poorly described merger of the Toro Creek Indians with another group, likely the Salinan Tribe of Monterey and San Luis Obispo Counties. By that incomplete standard, the submitted documentation is adequate to support their identification between 1900 and 1975, from 2000 to 2019, and perhaps the 1990s. The petitioner failed to present sufficient evidence to meet criterion § 83.11(a), identification as an American Indian entity since 1900, for at least one decade, the 1980s, and may do so in the 2020s. Its evidence for the 1990s consists of one personal note that does not clearly identify the Toro Creek antecedent to the petitioning entity. Moreover, the petitioner's evidence in the 1960s and 1970s relies on one piece of evidence within each decade. The OFA may allow the petitioner a gap from 1980-1989 through their "tunnel" test, though the petitioner's case for a "substantially continuous basis" would be more convincing if it had more sources in the 1960s,

1970s, and 1990s. If the DOI determines that the 1992 note does not qualify as sufficient identification, the Monterey/Toro Creek entity would fail to meet the criterion.

However, the evidence submitted does not appear to provide substantially continuous identifications of a Salinan tribal entity broader than two of the three historical lineages—the Pedro Encinales line and the Encinales Bylon Toro Creek line. Though we cannot confirm this without access to tribal genealogical records, the petitioner appears to fail to include any evidence of identification of members of the Agata Maria lineage. This is significant since as of its 2024 petition, 172 of the petitioner's 248 members (69%) descend through the Agata Maria line. An identification of the narrower Monterey/Toro Creek entity is not the same as an identification of the current petitioner, and the current petitioner is substantially different from the entity that is being described until around 2004. Consequently, we have concluded that the petitioner has not provided sufficient evidence to meet criterion (a) for the years between 1900 and 2003. We have assumed that the materials from 2004 to the present identify the current petitioner in its contemporary form with all three lineages.

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 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 Salinan 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.

**§ 83.11(b)(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;**

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

**§ 83.11(b)(1)(ii), Social relationships connecting individual members;**

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

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

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

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

**§ 83.11(b)(1)(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;**

**§ 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;**

**§ 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;**

**§ 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; or**

**§ 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.**

**§ 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 members residing in that area;**

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

**§ 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;**

**§ 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; or**

**§ 83.11(b)(2)(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 Salinan 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 19th 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.<sup>73</sup>

<sup>73</sup> 59 F.R. 38, 9287 (February 25, 1994).

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.<sup>74</sup>

### **Comments on the Salinan Evidence for Criterion § 83.11(b), Community, 1900 through 1954**

After the former Spanish missions were secularized by the Mexican government in 1834, the mission populations dispersed and Indian settlements developed outside the missions. The petitioner links its ancestors to two settlements in the second half of the 19th century: at “The Indians” or Milpitas in Monterey County, and at Toro Creek in San Luis Obispo County. In Monterey County, the petitioner argues that, following the 1875 acquisition of the fraudulent Milpitas Mexican Land Grant, Eusebio Encinales purchased 100 acres at the remote northwest tip of the Milpitas Grant. Encinales would later acquire additional acreage, and over time, at least six other Indians would acquire property in the area, some of which was adjacent. In San Luis Obispo County, the petitioner cites an archaeological report that places the Baylons in the Toro Creek area at least back to the 1750s and argues that several of its ancestors made their way south to Toro Creek after their dispossession in Monterey County in 1875.

At the turn of the 20<sup>th</sup> century, the petitioner asserts that members of the Encinales and the Encinales Bylon Toro Creek family lines resided in two geographically separate areas: at “The Indians” or Milpitas in Monterey County, and at Toro Creek in San Luis Obispo County. In addition to these two, the Kelsey census identified a third settlement, at Mansfield in Monterey County, where the Mora family resided. While the petitioner uses the 1900 and 1910 censuses to establish the members of the Milpitas group, neither census identifies a settlement or village. However, the 1905-1906 Kelsey census identifies individuals at the Milpitas and Mansfield locations and indicates that there were rancherias or Indian settlements. The petitioner has been unable to produce census data from the three censuses, Federal or Kelsey, that identify more than a single household of Indians in the Toro Creek area in San Luis Obispo County. Instead, the petitioner uses a combination of a 1982 court declaration from archaeologist Robert Gibson,

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<sup>74</sup> 25 C.F.R. 83 (As of April 1, 2012), Sec8on 83.6; Accessed at: <https://www.doi.gov/sites/doi.gov/files/uploads/25cfr83.pdf>

Homestead Act applications, newspaper articles, and secondary sources to locate the Toro Creek area and its Indian residents.

The petitioner asserts that it maintained distinct communities at “The Indians” and at Toro Creek in the first years of the 20<sup>th</sup> century. There is, however, a lack of evidence demonstrating this. The petitioner provides limited evidence of social relationships and does not evince interaction, collective identity, or institutions within these groups. The only direct evidence of social relationships are two endogamous marriages between 1910 and 1920. While the petitioner cites the 1900 census in an effort to demonstrate that at least 50 percent of its members lived “exclusively or almost exclusively” in a geographical area, it appears to omit antecedents within the Agata Maria lineage in its calculations and struggles to show any interaction between the rest of the group and those at “The Indians.” Moreover, the evidence for any connection between the two groups in this period is limited to one endogamous marriage between Tito Encinales and Maria de los Angeles Bylon Ocarpia Encinales and the assumption that Clara Bylon’s (nee Encinales) family kept ties to her parents and kin in Monterey County. Aside from that, the petitioner offers no evidence of social interaction between the two groups in these decades.

Despite the fact that the petitioner argues that an Indian settlement had developed around “The Indians,” as demonstrated by the Kelsey census and the fact that several members of the Encinales line acquired land there around the turn of the century, the petitioner shifts its focus away from Monterey County in the early 1900s and to Toro Creek. The marriage of Clara Bylon’s (nee Encinales) children and the growth of their families seems to be the turning point. In fact, after 1920, there is very little discussion of or reference to the Monterey County families aside from occasional newspaper articles on aging and recently deceased ancestors.

However, there is also a dearth of material demonstrating a distinct Indian community at Toro Creek. The petitioner was unable to uncover records of a settlement in the Federal censuses, and unlike in Monterey County, Kelsey did not document Indian settlements in San Luis Obispo County. In lieu of primary source materials, the petitioner attempts to muddle through with one secondary source that indicates that “about eight Indians” lived there in a camp around 1920-21, but there is no documentation of their names or whether these individuals interacted with other members of the petitioning entity. The petitioner provides a list of Indians whom it claims “were living at the Toro Creek reservation as a distinct community” between 1930 and 1954.<sup>75</sup> However, there is no documentation of the residence of many of these persons, no information on when these individuals lived there, and no evidence on how they lived as a community at Toro Creek. For example, many of the Pierces, the largest family listed, are recorded on the 1910 census as living in Monterey County, and there is no evidence that they returned to

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<sup>75</sup> STMSLO, 2024 Petition, pp. 242-243 of pdf.

Toro Creek to live. In fact, the petitioner argues that many of the Pierces moved to Morro Bay where at least some of them opened a business by the 1930s.

Much of the evidence of continued residence at Toro Creek after around 1920 emerges from litigation from the Luigi Marre Land & Cattle Company against three Indians, Raymond Rosas, Jose Baylon, and Maria Baylon, who were living there. In 1929, the Company filed a lawsuit to have the three evicted from their homes at Toro Creek. The filings and related newspaper articles about the case demonstrate that these three resided there. However, none of these documents evince the existence of an Indian community at Toro Creek, or that there was a contemporary network of relationships and interaction among the petitioner's ancestors of which Toro Creek was a part. The closest that the petitioner can approach this is a recollection from Les Pierce about fifty years after the lawsuit; Les said that he threatened the sheriff with violence if he didn't let two of the evicted Indians go. Evidence concerning the 1929 lawsuit does not demonstrate that the petitioner meets section 83.11(b).

After the resolution of the litigation and its appeals, the petitioner's evidence for the rest of the 1930s, 1940s, and 1950s rests exclusively on the activities of a Toro Creek Indian kinship group. This group appears to have first met in February 1934. The petitioner has not made the full document publicly available, but from its first page, it is clear that the attendees composed by-laws, which included the naming of leaders, setting requirements for the group, and outlining its goals. Without the entire document, we cannot confirm the names of those who attended the first meeting; however, we strongly suspect that they included the five Pierce siblings and that those five may have been the only attendees. If so, those five siblings named themselves as tribal leaders at that first meeting. Tellingly, they were the only participants at the rest of the meetings. The kinship group seems to have met six times in the nineteen years between 1935 and 1953 (and most frequently between 1935 and 1940), and it appears that the purpose of the group was twofold: to discuss and organize tasks for the business enterprises of the Pierce family, particularly its commercial abalone fishing business, and to assist family members in need. The minutes reveal some degree of interaction between members through their discussion of the needs of their extended family and their intention to help with food and supplies. However, despite the suggestion that tribal members could work at the Pierce enterprises and the claim that two Herrera brothers worked on abalone crews for the business, there is no evidence that any, outside of the immediate Pierce family, did so. There is no additional evidence of social relationships, patterns of interaction, distinct community institutions, or economic cooperation.

**Comments on the Salinan Documentation for Categories of Evidence for Criterion § 83.11(b), Community, 1900 through 1954**

**§ 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 petitioner has not claimed that it has met this category. However, it has asserted that it meets the High Evidence category § 83.11(b)(2)(ii), at least 50 percent of the members of the entity were married to other members of the entity. The petitioner argues that it meets § 83.11(b)(2)(ii) from 1910 to 1930 based on its analysis of the rates of endogamous marriage within its listed membership for 1920 and 1930. In 1920, the petitioner lists 23 members, of which 17 are adults, and 4 endogamous marriages (of two couples, the Moras and the Encincales). In 1930, the petitioner lists 26 members, of whom 13 are adults, 4 endogamous marriages (of two couples, the Moras and the Encincales), and 3 exogamous marriages. It provides no statistics for 1910. There is no information on the marriage patterns of antecedents within the Agata Maria line. It is our position that two endogamous marriages of couples do not demonstrate a pattern. Based on this information, the petitioner has not demonstrated significant rates of marriage within the group.

**§ 83.11(b)(1)(ii), Social relationships connecting individual members**

The petitioner provides several sources as evidence that it meets this category from 1930 to 1954: a 2008 compilation of recollections, "The End of the Line," three newspaper articles from the late 1970s; the 1934 by-laws from "The Toro Creek Indians" kinship group; and six sets of meeting minutes from that kinship group. The 2008 book of recollections provides very little information on social relations between identified individuals with the exception of an anecdote from a childhood friend of Anna Forsting, who related that Anna "often stayed on the reservation with her relatives and told me about her family and some of their occupations" and named six relatives residing at Toro Creek. This would have occurred in the 1920s. In her 1979 article in *The Paso Robles Country News*, Dorothy Lowe describes the shock of Roman Roses and three others when they were served with an eviction notice in 1929 as well as the courthouse scene in 1930 and Roman Roses' decision to leave Toro Creek in the 1940s to live with his sister, Felicita. The two articles on Les Pierce omit any information on social relationships with individuals aside from his parents, the burying of deceased relatives, and his defense of the two unidentified Indians in 1929 who had been jailed. None of these sources identify relationships between individuals outside of their immediate family. In its 2001 Final Determination against federal acknowledgement of the Duwamish Indian Tribe, the Department argued that:

For kinship interactions to be useful evidence under 83.7(b), they must connect individuals from a number of different family lines over many generations. In this tribal context, crisscrossing connections link the

entire membership and generate over time a dense network of ties and obligations.<sup>76</sup>

This evidence does not appear to demonstrate such a network of ties and obligations.

The remaining evidence concerns the formation of “The Toro Creek Indians” kinship organization in 1934 and its subsequent activities as documented by six sets of meeting minutes from 1935 to 1953. Starting in 1934, this organization met on at least seven different occasions through 1953. While it claimed to include Indians from Toro Creek, San Antonio Mission, and the San Miguel Mission and “their descendants tribally related to us,” only four individuals appear to have attended all their meetings and all were siblings from the Pierce family [the fifth, Bill Pierce, died in an accident in 1945]. Much of their meetings were consumed by discussion of their business enterprises, including individual responsibilities in their operations as well as new regulations. However, in the meetings, the siblings also discussed what they called “Tribal Needs,” which they interpreted as assisting relatives with food and other supplies and sometimes help with maintenance tasks on their land and homes. For example, in 1935, Tito Encinales and Aunt Maria were to be given food and helped with a small roof repair. In 1938, one of the siblings, Bessie Wood and her husband, were helping out Dolores Encinales with supplies, with assistance from Joe Mora. The petitioner argues that the meeting minutes demonstrate social relationships between these individuals, and it seems that there were connections between different generations in separate communities. However, the evidence is minimal and mostly limited to relationships within the Encinales Bylon Toro Creek line, with a few examples of connections with the Pedro Encinales line. There is no evidence of social events such as marriages or funerals, and no oral interviews are included. Moreover, there does not appear to be any evidence of relationships between members of these two lineages and the numerous Agata Maria line.

In order to meet the requirements of this category of evidence, the petitioner has asserted that there was a distinct social community of Indians at Toro Creek and that past DOI findings have determined that first degree kin, defined as parents, grandparents, children, and siblings, are assumed to maintain contact even after they leave these distinct social communities. However, there are problems with the petitioner’s argument. First, the petitioner never establishes the existence of a distinct social community at Toro Creek or provides robust evidence identifying its residents at given points of time before 1929. So, the assumption that these individuals would maintain social relationships based on previous residence in those communities is limited to the few individuals who can be identified. For example, the Pierce family siblings can be assumed to maintain relationships based

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<sup>76</sup> U.S. Department of the Interior, Office of Federal Acknowledgement, Final Determination, Duwamish Indian Tribe, 2001, pp. 37-38.

on previous residence as well as their first-degree kin. Since the Toro Creek group appears to be tightly interrelated, however, that may be sufficient to demonstrate social relationships. However, even if we grant the petitioner these assumed relationships, there appears to be no evidence for social relationships within the members of the Agata Maria lineage or between members of that line and members of the other two historical lines of descent between 1900 and 1954. Furthermore, the petitioner neglects to document social relationships between the members of the Encinales line, many of whom appear to reside in Monterey County even after the petitioner shifts its focus to the Toro Creek group. The petitioner does not provide sufficient evidence to demonstrate the network of ties and obligation over this period to meet this category.

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

The petitioner provides several sources as evidence that it meets this category from 1930 to 1954: a 2008 compilation of recollections, "The End of the Line;" three newspaper articles from the late 1970s; the 1934 by-laws from "The Toro Creek Indians" kinship group; and six sets of meeting minutes from that kinship group. The petitioner's argument for this category of evidence is identical to that for § 83.11(b)(1)(ii), social relationships connecting individual members, and it leans heavily on findings from previous petitions that determined that social relationships and interactions could be assumed through first-degree kin and by previous residence in distinct social communities.

However, in the Department's 1993 Proposed Finding on the Snoqualmie Indian Nation, it observed that "[s]ocial interaction" describes the actual occurrence of interaction between individuals such as at meetings, in conversation, during conflicts and the like.<sup>77</sup> The petitioner provides very little evidence of such interaction aside from the seven meetings of the Pierce siblings between 1934 and 1953.

Furthermore, the DOI has repeatedly found that social interaction must go beyond interaction within families and must include those from other family lines. In its 2001 Final Determination against the Duwamish Indian Tribe, the Department stated that:

Most Americans interact with other family members, meaning individuals within limited lineage groupings (groups of individuals who descend from sets of grandparents or great-grandparents). For kinship interactions to be useful evidence under 83.7(b), they must

<sup>77</sup> U.S. Department of the Interior, Office of Federal Acknowledgement, Proposed Finding, Snoqualmie Indian Tribe, 1993, p. 15.

connect individuals from a number of different family lines over many generations.<sup>78</sup>

And in its 1997 Proposed Finding concerning the Chinook Indian Nation, the Department argued that “social interaction should not only be within family lines, but across family lines.”<sup>79</sup>

The petitioner has declared that it is composed of three lineages: the Pedro Encinales line, the Encinales Byron Toro Creek line, and the Agata Maria line. The petitioner has provided some evidence of interaction of the five Pierce siblings through their kinship group meetings between 1934 and 1953, and it can be assumed that the siblings were in contact with their immediate kin. The meeting minutes also suggest that some were communicating with other family members as well as a few distant relatives from the Pedro Encinales lineage. There is a general absence, however, of evidence of regular interaction throughout the entire 1900 to 1954 period. Moreover, the petitioner appears to provide no evidence of interaction with members of the Agata Maria lineage. This is particularly striking since, as of 2024, 172 of the petitioner’s 248 members (69%) descend from the Agata Maria line. Without further evidence of social interaction across family lines, and additional evidence of interaction before 1934, the petitioner cannot meet this category of evidence.

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

The petitioner has not submitted evidence regarding this category of evidence, and it appears that the petitioner does not meet its requirements.

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

The petitioner has not submitted evidence regarding this category of evidence, and it appears that the petitioner does not meet its requirements.

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

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<sup>78</sup> U.S. Department of the Interior, Office of Federal Acknowledgement, Final Determination, Duwamish Indian Tribe, 2001, pp. 37-38.

<sup>79</sup> U.S. Department of the Interior, Office of Federal Acknowledgement, Proposed Finding, Chinook Indian Nation, 2001, p. 9.

The petitioner has not submitted evidence regarding this category of evidence, and it appears that the petitioner does not meet its requirements.

**§ 83.11(b)(1)(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.**

The petitioner has not submitted evidence regarding this category of evidence, and it appears that the petitioner does not meet its requirements.

**§ 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 asserts that it meets this category of evidence by citing over two dozen documents that include the 1900 Federal census, several newspaper articles, two books, filings from two lawsuits, by-laws and meeting minutes from the Toro Creek Indians group, personal letters and materials from the petitioner's efforts to secure access to Morro Creek with the State of California. The DOI has consistently held that in order to meet this category of evidence a petitioner must demonstrate that it has put forth this collective Indian identity, rather than being identified by outside experts. Thus, several of the cited documents may not be used as evidence, including the books, and some of the newspaper articles.

The petitioner provides no evidence that there was a collective identity before 1934. The 1900 census does not identify a collective identity, but instead identifies individuals as "Mission." Harrington's field notes from his visits in 1922 and 1930-32 to the area describes several Indian individuals and their associations; however, none of these notes identify a Salinan Indian entity in the 20th century. Moreover, this would not qualify as self-identification of a collective entity. None of the documents cited in the 1929 case, *Luigi Marre Land & Cattle Company v. Raymond Rosas, Jose Baylon, and Maria Baylon*, include a collective identity of the three and there are no quotes from the three defendants that do so either.

In February 1934, a group of individuals, likely five siblings from the Pierce family, formed what appears to be a kinship group known as "the Toro Creek Indians." The notes from the first meeting are not publicly available in full, but they include goals for the group, social requirements, and an article naming tribal leaders. Over the next nineteen years, this group met at least six times (in 1935, 1938, 1939, 1940,

1948, and 1953) and consistently identified themselves as the Toro Creek Indians. There is no direct evidence of regular meetings after 1953; however, in 1969, one of the siblings who regularly participated in the Toro Creek Indians meetings wrote to another sibling, and in her letter, she referred to a 1964 vote, a next meeting, and attached “a recent Toro Creek mailing list.” This suggests that the group continued its meetings and continued to identify itself as the Toro Creek Indians. These years were the peak of the termination movement in California, and it is perhaps understandable that Indian groups would downplay their identity under such conditions. But after 1969, the evidence grows even more sparse. Two individuals, Les and Dick Pierce, identify Les and their father, Adrian Pierce, as Toro Creek Indians in 1978 and 1992, respectively; the next clear evidence of collective identity is not provided until 2001. Even if we allow for the gap of sixteen years between 1953 and 1969 on the theory that there were meetings between these dates, the petitioner would fail to meet this category of evidence as it can only demonstrate persistence of a limited collective identity for thirty-five years between 1934 and 1969.

Furthermore, as has been discussed throughout this report, the petitioner appears to be describing a different tribal entity than it is now. The evidence submitted does not appear to demonstrate a continuous collective Salinan identity broader than two of the three historical lineages—the Pedro Encinales line and the Encinales Bylon Toro Creek line. Though we cannot confirm this without access to tribal genealogical records, the petitioner appears to fail to include any evidence from members of the Agata Maria line. This is significant since as of its 2024 petition, 172 of the petitioner’s 248 members (69%) descend from the Agata Maria line. An identification of a narrower collective Toro Creek Indian identity is not the same as that of the current petitioner.

Finally, the petitioner claims this category of evidence qualifies under Section 83.11(b)(2), High Evidence, and can be used to meet criterion (c) in addition to criterion (b). This is mistaken. This category is one of several within § 83.11(b)(1), and it must be combined with at least one additional form of evidence to show that a significant and meaningful portion of the petitioner’s members constituted a distinct community at a given point in time.

**§ 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 evidence regarding this category of evidence, and it appears that the petitioner does not meet its requirements.

**§ 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 evidence regarding this category of evidence, and it appears that the petitioner does not meet its requirements.

**§ 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.**

Since the petitioner has not demonstrated political influence or authority for any of the categories under § 83.11(c)(1), the petitioner does not appear to meet this category of evidence.

**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 members residing in that area.**

The petitioner asserts that it meets this category of evidence for 1900-1910 based on the 1900 and 1910 Federal census enumerations of San Antonio Township in Monterey County, California, several Homestead Act applications, and a map of the claimed geographical area derived from the Homestead Act applications.

In 1900, the petitioner claims that it had 25 members, of which 15 resided at "The Indians" in Monterey County. Seven of these members supposedly lived at the Toro Creek settlement, and two, Joe Mora [the petitioner records him as Joe Bylon, but it is clearly Mora] and David Mora, were said to be along the Nacimiento River. Dolores Encinales was unaccounted for in 1900. The 15 members at the "The Indians" are enumerated on the 1900 Federal census for San Antonio Township, Monterey County, and are listed under Indian population. The census did not identify these individuals as members of an Indian entity, though it did identify them as Indians and grouped them into households. The petitioner cites six Homestead Act applications from its members and compiled them on a plat from the General Land Office to demonstrate that they "either held land through or would

eventually acquire land within the decade” of 1900-1909 in this isolated area in Monterey County, California.<sup>80</sup> Since the petitioner did not make the applications publicly available, we cannot verify these claims, but if true, they strongly suggest that these fifteen Indians (of 25) resided in a geographical area exclusively or almost exclusively composed of members of a portion of the entity. The Kelsey census of 1905-1906 also identified these Indians at a settlement at Milpitas, though he noted that all but Perfecto did not own land. However, the petitioner provides no evidence that the remaining members maintained consistent interaction with members residing in “The Indians” during these years.

In 1910, the petitioner asserts that it had 29 members, of which 14 resided at “The Indians” in Monterey County. Six were residing in San Luis Obispo County, allegedly at Toro Creek; however, the petitioner’s interpretation of the census records for Clara Bylon and Joe Bylon are very much in question.<sup>81</sup> Another four, all Pierce siblings, were children living with their father elsewhere in Monterey County. All of the Encinales family identified as owning land were on the 1910 census, grouped into two households. If we allow for the accuracy of the petitioner’s map and its claims on the Homestead Act applications, it appears that 14 of 29 members lived in one geographical area exclusively or almost exclusively composed of members of the entity. That is, of course, less than 50 percent of its claimed members. Furthermore, it is likely only a portion of the actual membership as the petitioner fails to include evidence of members descended within the Agata Maria lineage.

The petitioner argues that the DOI has allowed for separate communities to “be recognized by the Office of Federal Acknowledgement as a single group if they are substantially linked by kinship and social ties” and provides two examples, the 1983 Proposed Finding regarding the Poarch Band of Creeks of Alabama and the 1993 Proposed Finding regarding the Snoqualmie Indian Tribe.<sup>82</sup> Neither of these examples fit the petitioner’s situation. In its 1983 Proposed Finding regarding the Poarch Band of Creeks of Alabama, the DOI found that both the original community and the portion that split off formed well-defined communities for decades, were culturally distinct from non-Indian settlers, and “maintained social relationships with their kinsmen . . . and remained a part of that larger community.”<sup>83</sup> Likewise, while many Snoqualmie members lived off-reservation through the first decade of the 20<sup>th</sup> century, they maintained “geographically distinct settlements,” “a distinct language and culture,” and kept “extensive kinship ties within the group as well as

<sup>80</sup> STMSLO, 2024 Petition, p. 36 of pdf.

<sup>81</sup> The relevant records in the 1910 census cited by the petitioner identifies a Clara Heil, Kelino Heil and Jose Heil, all living in a single household in Morro Township, San Luis Obispo County. The petitioner does not explain how it has concluded that these three were actually Bylons or, if they were, why it neglects to include Kelino Heil.

<sup>82</sup> STMSLO, 2024 Petition, pp. 203-204 of pdf.

<sup>83</sup> U.S. Department of Interior, Office of Federal Acknowledgment, Proposed Finding, Poarch Band of Creeks of Alabama, 1983, p. 5 of pdf.

within the larger network of Puget Sound Indian society.”<sup>84</sup> The petitioner, however, has not provided strong evidence of distinct communities in either Monterey County or at Toro Creek and has not evinced that these groups maintained strong kinship ties in the first decade of the 20<sup>th</sup> century. The only evidence for any connection in this period is the 19<sup>th</sup> century marriage of Clara Encinales and Onesimo Bylon, her later move to the Toro Creek area with her children, and an assumption that her family kept ties to her parents in Monterey County in the 20<sup>th</sup> century. Aside from that, the petitioner offers no evidence of social interaction between the two groups in this decade.

Without evidence of consistent interaction between the Monterey group and those living at Toro Creek for the years between 1900 and 1910, the petitioner does not meet this category of evidence. Moreover, as in the rest of the petition, there is no evidence of members within the Agata Maria lineage being involved at all—as residents of these areas or having any social interaction with the members enumerated by the petitioner. That absence alone is fatal to the petitioner’s argument.

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

The petitioner argues that it meets this category of evidence from 1910 to 1930 based on its analysis of the rate of endogamous marriage within its listed membership for 1920 and 1930. In 1920, the petitioner lists 23 members, of whom 17 are adults, and 4 endogamous marriages. In 1930, the petitioner lists 26 members, of whom 13 are adults, and 4 endogamous marriages. It provides no statistics for 1910. The percentage of endogamous marriages among claimed adult members clearly falls below 50 percent for 1920 (4 of 17) and 1930 (4 of 13), and even though we have no access to tribal genealogical data, it is very likely that the percentage is well below 50 percent for 1910 as well.

The petitioner has misinterpreted this category of evidence. The regulations clearly state that “at least 50 percent of the members of the entity were married to other members of the entity.” The petitioner understands this as meaning 50 percent of marriages must be to other members of the entity. That is mistaken. The petitioner may derive this misinterpretation from its reading of the 1994 Proposed Finding of the Jena Band of Choctaw Indians. In that document, the Department described the Band’s rate of endogamous marriage in its evaluation of the Jena community and its stability through the 20<sup>th</sup> century and found that its rate of endogamous marriages among the membership as compared to exogamous marriages remained

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<sup>84</sup> U.S. Department of Interior, Office of Federal Acknowledgment, Proposed Finding, Snoqualmie Indian Tribe, 1993, p. 8 of pdf.

over 50 percent until 1960.<sup>85</sup> However, this regulation has evolved since the first iteration of the Federal acknowledgment regulations in 1978. In the 1994 Proposed Finding, the Jena Band was evaluated under the 1978 regulations, and at that time, there were no specific criteria for the rate of endogamous marriages. In the 1994 regulations, one of the categories of evidence under criterion (b), community, was that: “At least 50 percent of the marriages in the group are between members of the group.”<sup>86</sup> That criterion was further refined in the 2015 revisions to the current category, which evaluates the percentage of the members of the entity in endogamous marriages rather than the percentage of marriages in the group. Since the petitioner is being evaluated under the 2015 iteration of the acknowledgement regulations, it has not met this category of evidence.

**§ 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 has not submitted evidence regarding this category of evidence, and it appears that the petitioner does not meet its requirements.

**§ 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 petitioner claims to meet this category of evidence for the 1930-1954 period through eleven pieces of evidence: a 2008 book of recollections of the Templeton area; three newspaper articles published in 1978 and 1979; the 1934 by-laws of The Toro Creek Indian group; and six sets of meeting minutes from that group dating between 1935 and 1953.

Neither the 2008 book of recollections nor the three newspaper articles evince the existence of distinct community social institutions or indicate that at least 50 percent of the members were involved in such institutions. Willhoit’s 2008 compilation of newspaper articles and recollections of the history of Templeton recounts a story that indicates that a small Indian settlement was at Toro Creek, that it numbered about eight residents in 1920-1921, and that once the Indians “lived a communal life under a chief.”<sup>87</sup> No further details are provided about

<sup>85</sup> U.S. Department of Interior, Office of Federal Acknowledgment, Proposed Finding, Jena Band of Choctaw Indians, 1994, pp. 110-115 of pdf.

<sup>86</sup> 59 F.R. 38, 9295 (February 25, 1994).

<sup>87</sup> STMSLO, 2024 Petition, p. 244 of pdf.

community social institutions at this village. Furthermore, the petitioner itself states just a few pages earlier in its petition that it had 23 members in 1920; thus, these eight unidentified residents did not make up 50 percent of the members of the petitioning entity. The three newspaper articles also fail to evince distinct community social institutions. Two of three recount Les Pierce's memories of the Toro Creek area. He does not describe any community social institutions. Moreover, he would have been about twelve years old when, as he claims, his family departed the area around 1914.<sup>88</sup> The third article describes the first settlement of a group of Salinan Indians in the area in the late 1800s and the loss of their land in 1929 from the Luigi Marre Land & Cattle Company lawsuit.

In February 1934, a group of individuals, likely five siblings from the Pierce family, formed what appears to be a kinship group known as "the Toro Creek Indians." The petitioner appears to characterize this group differently within its petition depending on the criterion; in criterion (c), it attempts to argue that the group was a body that exercised political authority or influence. In criterion (b), however, it argues that the group was a distinct community social institution, and after reviewing the publicly available evidence, we argue that it was most likely a kinship organization. That interpretation fits with the makeup of the group, its pattern of attendance, and its actions between 1935 and 1953.

The notes from the first meeting are not publicly available in full, but they include goals for the group, social requirements, and an article naming tribal leaders. Since the entire document is not publicly available, we cannot evaluate all of the petitioner's claims, including the identity of the participants at the meeting and how well it was attended. Over the next nineteen years, the group would meet at least six times (in 1935, 1938, 1939, 1940, 1948, and 1953) to discuss different Pierce family business enterprises, such as commercial abalone fishing and ranching, as well as actions to assist members of the extended Pierce family in need, particularly the elderly and new parents. The petitioner claims that the organization supported members by giving them access to employment in businesses such as commercial abalone fishing or a café; however, there is almost no evidence of actual community participation in these businesses aside from Pierce family members.

Another question is whether this community social institution encompassed at least 50 percent of the entity's members. The petitioner does not provide figures with which to verify this, though its membership may be included in at least some of the meeting minutes. There are two lists of members from the petitioner: from 1930 that show 26 members; and another from a 1969 letter with 17 members. Only four or five members consistently attend, though others are mentioned in the minutes,

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<sup>88</sup> Les Pierce's recollections of his whereabouts are further complicated by the fact that the 1910 census demonstrates that he was living with his father and siblings in Monterey County, rather than at Toro Creek in San Luis Obispo County. That would place him outside of Toro Creek at the age of 8.

and members of the extended family, including members of the Encinales line in Monterey County, appear to benefit from assistance with food and supplies. Despite this, we are skeptical that the kinship organization meets the category's membership requirement, at least in part because the petitioner does not appear to refer to anyone from the Agata Maria lineage, and by the middle of the 20<sup>th</sup> century, a substantial number of members of that line must have been within the petitioning entity, even though the petitioner consistently fails to document their participation or even their existence during the 20<sup>th</sup> century.

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

The petitioner claims that it has met this category through having entity leaders or internal mechanisms that exist or existed that allocate entity resources such as land, residence rights, and the like on a consistent basis (in accordance with § 83.11(c)(2)(i)(A)), and organize or influence economic subsistence activities among the members, including shared or cooperative labor (in accordance with § 83.11(c)(2)(i)(D)). However, as we have shown in the section on (c), political influence or authority, the petitioner has not met the requirements for these High Evidence categories. Thus, the petitioner has not fulfilled the requirements for this category.

**Conclusions for Criterion § 83.11(b), Community, 1900 through 1954**

The Salinan petitioner fails to meet criterion § 83.11(b) for the period from 1900 through 1954 for every category. Among the reasons for this are its failure to evince relationships and social interaction between members, particularly involving all three family lineages, the absence of documents demonstrating a persistent collective identity over more than 50 years, and an inability to document the existence of distinct social communities or community institutions.

The petitioner only provides direct evidence for three of the separate categories within § 83.11(b)(1), and attempts to argue that it qualifies under § 83.11(b)(1)(xi) through two others: § 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, and § 83.11(c)(1)(iii), there is widespread knowledge, communication, or involvement in political processes by many of the entity's members. We have demonstrated in our discussion of criterion (c) that the petitioner does not meet either of these two categories.

Of the categories within § 83.11(b)(1), the petitioner argues that it meets three: § 83.11(b)(1)(ii), social relationships connecting individual members;

§ 83.11(b)(1)(iii), rates or patterns of informal social interaction that exist broadly among the members of the entity; and § 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. There may be limited evidence of a collective identity from 1934 into the 1950s and 1960s due to an indication that the Toro Creek Indian kinship group continued its meetings past 1953 into the late 1960s. However, even with a very generous interpretation, that would end in 1969, thus limiting the identity to 35 years. And this identity is limited to one, perhaps two, of the three historical lineages, omitting the most numerous, the Agata Maria lineage.

In the other two categories within § 83.11(b)(1), the petitioner neglects to supply sufficient evidence to meet the requirements, even if the petitioner was limited to just the Toro Creek Indian group. For example, there is no evidence of informal social interaction that exists broadly across the entity. The petitioner does not offer evidence of community events within its membership that would evince interaction such as birthdays, celebrations, weddings, and funerals. Direct evidence of social relationships connecting individual members is also lacking. The petitioner's best evidence is from seven meetings of a Pierce family kinship group that took place between 1934 and 1953. The participating siblings discussed the needs of individual members, including of the Encinales line in Monterey County, and their intention to help them meet these needs. Presumably, they were made aware of these through existing social relationships, though the petitioner is unable to explain which ones. Furthermore, these are only a handful of meetings over twenty years. And as in the rest of the petition, there is no evidence of the participation of members of the Agata Maria line.

The petitioner asserts that it meets three categories of High Evidence within § 83.11(b)(2) within different periods of time: § 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 members residing in that area (for 1900-1910); § 83.11(b)(2)(ii) at least 50 percent of the members of the entity were married to other members of the entity (for 1910-1930); and § 83.11(b)(2)(iv), 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 1930-1954). Yet the evidence for all three categories is inadequate. The petitioner misunderstands the requirements for § 83.11(b)(2)(ii) and interprets the category as at least 50 percent of marriages of the entity rather than "at least 50 percent of the members of the entity." There is no evidence that 50 percent of the members of the entity were married to other members of the entity. The petitioner attempts to demonstrate that 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 for the years between 1900 and 1910 using the 1900 and 1910 Federal censuses but it is unable to demonstrate either part of the evidentiary requirements. While just over 50 percent of the named members lived in a geographic area in Monterey County in the first decade of the 20th century, this appears to exclude members of the Agata Maria lineage, and the petitioner fails to show consistent interaction of the “balance of the entity” in either 1900 or 1910. And while there is evidence of a distinct community social institution, in the form of a kinship group, from 1934 to 1953, only four or five members of the petitioning entity, all siblings from the Pierce family, attended its infrequent meetings and were engaged in its activities.

The petitioner asserts that it meets § 83.11(b)(2)(v) by meeting the criterion in § 83.11(c) using evidence described in § 83.11(c)(2). This includes the High Evidence categories of § 83.11(c)(2)(i)(A), allocating entity resources such as land, residence rights, and the like on a consistent basis, and § 83.11(c)(2)(i)(D), organizing or influencing economic subsistence activities among the members, including shared or cooperative labor. However, we have demonstrated in our discussion of criterion (c) that the petitioner does not meet these or any of the categories of High Evidence within § 83.11(c)(2).

Aside from the lack of evidence, the other major problem underlying the entire petition, including criterion (b), is the fact that the current Salinan petitioner appears to be very different from the Toro Creek Indians group that it tries to document through the 20<sup>th</sup> century, and the petitioner consistently fails to confront this fact throughout its petition, including the sections concerning criterion (b). Specifically, the evidence submitted by the petitioner does not document community within a Salinan tribal entity broader than two of the three historical lines—the Pedro Encinales line and the Encinales Bylon Toro Creek line. Though we cannot confirm this without genealogical records, the petitioner appears to fail to include any evidence of community participation of members of the Agata Maria line. This is significant since as of its 2024 petition, 172 of the petitioner’s 248 members (69%) descend from the Agata Maria line. Documenting the narrower Monterey/Toro Creek entity is not the same as documenting the current petitioner, and the current petitioner is substantially different from the entity that is being described.

The Acknowledgment regulations require that a petitioner must demonstrate that it comprises a distinct community and that it has existed since 1900. The Salinan petitioner has failed to meet any of the categories of evidence within the community criterion. Therefore, it does not meet criterion § 83.11(b) for the entire period from 1900 through 1954.

**Comments on the Salinan Evidence for Criterion § 83.11(b), Community, 1955 through 2024**

The petitioner has presented very little evidence of the activities of its ancestors in the years after 1953 and almost no evidence that it comprised a distinct community. For the years from 1954 to 1969, the petitioner's evidence consists of a single letter from Bessie Martin to her sibling, Edward Pierce. In the letter, Ms. Martin referred to a 1964 vote, a next meeting, and attached "a recent Toro Creek mailing list." This suggests that the Toro Creek Indians kinship group may have continued its meetings after 1953. However, as we have discussed elsewhere in this evaluation, only four or five people, all Pierce siblings, regularly attended these meetings. The letter also indicates that there was at least some communication between the Pierce siblings and others, but it does not show the nature or frequency of the interaction. Nor does it indicate if their relatives were engaged in social relationships with each other.

From 1975 to 1982, the evidence submitted by the petitioner describes the concern about a tribal cemetery on private property at Toro Creek and various efforts to gain access to the cemetery by three members of the Pierce family. Though the petitioner presents these documents as evidence of social relationships, discrimination by non-members, and of a collective entity, the materials fail to evince any of these conditions. There is no indication that this matter was of importance to other members. In fact, it is unclear from the evidence provided that the three were even collaborating with each other, rather than trying to gain attention for the cemetery as individuals.

After 1982, there is a nearly twenty-year gap in evidence with one exception, a 1992 personal note from Dick Pierce to his uncle, Edward Pierce. This brief note confirms that the two spoke after Adrian Pierce's funeral, that Dick Pierce wished that "things could have been different 10 years ago with Toro Creek for our Tribe," and that Dick included photographs of Adrian Pierce for his uncle. While the petitioner claims that the note documents social relationships, informal social interaction, and a distinct community social institution, this is little more than evidence of a kinship relationship between the two men. The petitioner has not provided any further evidence of relationships or interaction in the 1990s or the existence of entity institutions.

The petitioner puts forth a 2001 note from Hilda Carpenter to her sister, Toni Woody, as additional evidence of social relationships, informal social interaction, and a distinct community social institution. In this note, Hilda Carpenter provided her sister with applications for a "new Salinan Indian Tribe," and informed her that their father, Edward Pierce, approved of the idea of the Toro Creek Indians to join this group. The petitioner has not provided any additional evidence concerning this merger, including meetings, communications or even recollections from oral interviews. There is no evidence of broad-based patterns of interaction among the petitioner's families, no evidence of disagreements or conflict, and no documentation

of the group that the members of the Toro Creek Indian group intended to join. Like the 1992 note, this is evidence of a continuing kinship relationship between immediate family members of the Pierces.

After the presumably successful merger around 2001, the petitioner contends that its efforts to gain access to Morro Rock for ceremonial purposes evinces social relationships, informal social interaction, and a distinct community social institution. These efforts are shown through a letter, a press release, a series of agreements between the petitioner and the State of California, and annual permits issued by the State. None of these materials demonstrate interpersonal relationships or interactions, community function, or institutions. The petitioner argues that these agreements and ceremonies “would not be possible . . . without widespread social relationships, social interactions, and communications;” that, however, is not the evidentiary standard.<sup>89</sup> The petitioner must supply evidence to demonstrate these relationships, interactions, and communications, and it is unable to do so, even over the last twenty years when evidence should be plentiful.

The petitioner does not identify a community institution that might act as a nexus for Salinan community activity and social interaction. Such institutions have been crucial to some successful applications in the past. For example, in its 1997 Proposal Finding for acknowledgement for the Match-e-be-nash-she-wish Band (MBPI) of Michigan, DOI found that:

The Methodist Mission Indian church at Bradley provided a focus for social activities which encompassed most of the group. . . . Because mission activities were controlled by the MBPI [petitioner] and because their activities extended beyond the actual church membership to all MBPI members, many church activities provided a significant level of evidence for community under criterion 83.7(b)(1)(ii) and 83.7(b)(1)(iii).<sup>90</sup>

At times, the petitioner seems to identify the Toro Creek Indians kinship group was such a nexus; however, there is no direct evidence of its continued existence after 1953. There are two personal notes (in 1992 and 2001) that refer to Toro Creek Indians, but they do not describe a community or social institution. A 1969 letter refers to voting and implies that there had been and would be meetings, but there is no confirmation of this. Moreover, the attendance of the group’s meetings was limited to five siblings of one family, and there is no indication of broad-based involvement in the group across all three lines of descent. The group appears to have functioned as Pierce family kinship organization first and foremost. The

<sup>89</sup> STMSLO, 2024 Petition, p. 282 of pdf.

<sup>90</sup> U.S. Department of the Interior, Office of Federal Acknowledgment, Proposed Finding, Match-e-be-nash-she-wish Band of Potawatomi Indians of Michigan, 1997, p. 8.

petitioner also argues that the series of documents from 2004 to 2024 regarding its efforts to gain access to Morro Rock for ceremonial purposes qualify, but it does not explain what this distinct community social institution was or how it operated. As a result, there does not appear to be a community institution for the Salinan petitioner in the 1955 to 2024 period.

The petitioner argues that several of the provided documents demonstrate the persistence of a collective identity continuously for at least 50 years. The DOI has consistently held that in order to meet this category of evidence a petitioner must demonstrate that it has put forth this collective Indian identity, rather than being identified by outside experts. Very few of the documents demonstrate such a collective identity between 1955 and 2024. The petitioner appears to be able to demonstrate this in the last eighteen years via its agreements with the State of California between 2006 and 2018, and through as yet unsubmitted tribal newsletters. After 1953, however, there is only indirect evidence of continued meetings of the Toro Creek Indians kinship group and only through 1969. At its most generous interpretation, the petitioner can evince a continuous collective identity for only thirty-five years, from 1934 to 1969, and again for the eighteen years between 2006 and 2024.

#### **Comments on the Salinan Documentation for Categories of Evidence for Criterion § 83.11(b), Community, 1955 through 2024**

##### **§ 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 petitioner has not submitted evidence regarding this category of evidence, and it appears that the petitioner does not meet its requirements.

##### **§ 83.11(b)(1)(ii), Social relationships connecting individual members.**

The petitioner asserts that it meets this category of evidence by citing several documents including: one 1969 letter from Bessie Martin to Edward Pierce; a letter from Richard J. Kresja, Chairman of the San Luis Obispo County Board of Supervisors, to Edward Pierce; three newspaper articles from 1978-1980; filings from a 1982 lawsuit; two personal notes dating from 1992 and 2001; and a series of documents from 2004 to 2024 concerning the petitioner's efforts to secure access to Morro Rock for ceremonial purposes. In the 1969 letter from Bessie Martin to her sibling, Eddie Pierce, Ms. Martin referred to a 1964 vote, a next meeting, and attached "a recent Toro Creek mailing list" of 17 individuals. This suggests that the Toro Creek Indians kinship group may have continued its meetings after 1953. However, as we have discussed elsewhere in this evaluation, after 1945, only four

people, all Pierce siblings, regularly attended these meetings. In the last set of meeting minutes from 1953, the participants discussed what they called “Tribal Needs,” which they interpreted as assisting relatives with food and other supplies and sometimes helping with maintenance tasks on their land and homes. They also discussed a Court of Claims settlement and the case before the Indian Claims Commission (ICC), and they noted that “each one of us can keep the families informed.”<sup>91</sup> This suggests that there was at least some communication between the Pierce siblings and others, but it does not show the nature or frequency of these relationships. Nor does it indicate if their relatives were engaged in social relationships with each other.

The 1975 letter from Kresja to Edward Pierce alludes to a concern about a tribal cemetery at Toro Creek but fails to demonstrate any social relationship connecting individual members of the petitioning entity. Likewise, the three newspaper articles dating from 1978 to 1980 do not describe contemporary social relationships connecting individual members. In the 1978 article in the *Atascadero News*, Les Pierce recalls “burying his aunt, Serviana Roses, and uncle, Jose Bailon.”<sup>92</sup> In addition, the 1980 article refers to the fact that Dick Pierce’s uncle “buried three of those people himself.”<sup>93</sup> However, the articles neglect to document what sort of relationship the two men might have had with the deceased and when it was. The filing of the 1982 lawsuit does not demonstrate social relationships either; in it, Dick Pierce only refers to “the sites of my people,” without describing the people or the relationship between them and other members.

The two personal notes from 1992 and 2001 indicate that kinship relationships between some members of the Pierce family continued. The 1992 letter demonstrates that Dick Pierce and his uncle, Edward Pierce, spoke after Adrian Pierce’s funeral. And in 2001, Hilda May Carpenter wrote to Toni Moody about merging the Toro Creek Indians group with another entity and noted that her father, Edward Pierce, approved of the idea. However, these are very limited demonstrations of social relationships and they do not go beyond the Pierce family. In its 2001 Final Determination against federal acknowledgement of the Duwamish Indian Tribe, the Department argued that:

For kinship interactions to be useful evidence under 83.7(b), they must connect individuals from a number of different family lines over many generations. In this tribal context, crisscrossing connections link the entire membership and generate over time a dense network of ties and obligations.<sup>94</sup>

<sup>91</sup> STMSLO, 2024 Petition, p. 258 of pdf.

<sup>92</sup> STMSLO, 2024 Petition, pp. 273-274 of pdf.

<sup>93</sup> STMSLO, 2024 Petition, pp. 271-272 of pdf.

<sup>94</sup> U.S. Department of Interior, Office of Federal Acknowledgement, Final Determination, Duwamish Indian Tribe, 2001, pp. 37-38.

This evidence does not appear to demonstrate such a network of ties and obligations.

Finally, the petitioner argues that a series of documents produced between 2004 and 2024 concerning the petitioner's efforts to secure access at Morro Rock for ceremonial purposes evince social relationships between individual members. But there is no indication of such relationships within any of these documents. Most are official agreements between the petitioner and the State of California or permits issued by the State.

It appears that the petitioner does not meet this category of evidence.

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

The petitioner claims to meet this category of evidence due to three personal notes dating from 1969, 1992, and 2001 as well as a series of documents produced between 2004 and 2024 concerning the petitioner's efforts to secure access at Morro Rock for ceremonial purposes. None of these demonstrate "rates or patterns of informal social interaction that exist broadly among members of the entity." The three notes demonstrate very limited interaction between some Pierce family members: Bessie Martin and Edward Pierce (1969); Dick Pierce, Adrian Pierce, and Edward Pierce (1992) and Hilda May Carpenter, Toni Moody, and Edward Pierce (2001). The 1969 letter refers to some interaction- "we all kept in touch to help answer questions"- but does not include any information on whom was interacting or the frequency of these undescribed communications. It most likely refers to the same Pierce siblings that participated in the kinship group. Curiously, though the 1992 note refers to a funeral, there is no attempt to document attendance at this event, even though this has been a standard approach to meet the category in the past. There is no indication of any informal social interaction in the documents cited in the 2000s and 2010s. Most are official agreements between the petitioner and the State of California or permits issued by the State.

The petitioner does not meet this category of evidence.

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

The petitioner has not submitted evidence regarding this category of evidence, and it appears that the petitioner does not meet its requirements.

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

The petitioner provides six sources to demonstrate that it meets this category of evidence: a letter from Bessie Martin to her brother, Eddie Pierce; a letter from Richard J. Kresja, Chairman of the San Luis Obispo County Board of Supervisors, to Edward Pierce; three newspaper articles from 1978-1980; and a filing from a 1982 lawsuit. It is unclear what argument the petitioner is making aside from the fact that it claims that it was a socially distinct group. The 1969 letter refers to a mailing list, assisting members with past compensation claims, and a 1964 vote, perhaps regarding the 1972 California Indian Judgement Roll. The rest of the sources cited refer to efforts to secure access to the cemetery in the 1970s and 1980s. However, none of the sources evince patterns of discrimination or other social distinctions by non-members. Furthermore, there is no evidence that there are social distinctions made by non-Indians. The only organization that the petitioner evinces is a Pierce family kinship group, and there is no evidence that this group interacted with non-members. The petitioner neither documents any separate institutions such as churches, clubs, or other similar organizations, nor provides evidence that its members are treated differently from other populations.

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

The petitioner has not submitted evidence regarding this category of evidence, and it appears that the petitioner does not meet its requirements.

**§ 83.11(b)(1)(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.**

The petitioner has not submitted evidence regarding this category of evidence, and it appears that the petitioner does not meet its requirements.

**§ 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 asserts that it meets this category of evidence by citing documents that include several newspaper articles, filings from a lawsuit, personal letters, and materials from the petitioner's efforts to secure access to Morro Creek with the State of California. The DOI has consistently held that in order to meet this category of evidence a petitioner must demonstrate that it has put forth this collective Indian identity, rather than being identified by outside experts.

In the 1900-1954 period, we have determined that there may have been a collective identity between 1934 and 1953 of a Toro Creek group due to the formation of a Toro Creek kinship organization and its meetings. The petitioner, however, has not provided any evidence that any of its members outside of the Pierce siblings recognized this collective identity. Moreover, after 1953, the evidence of a collective identity grows weaker. There is no direct evidence of regular meetings after 1953; however, in 1969, one of the siblings who regularly participated in the Toro Creek Indians meetings wrote to another sibling, and in her letter, she referred a 1964 vote, a next meeting, and attached "a recent Toro Creek mailing list." This suggests that the group continued its meetings and continued to identify itself as the Toro Creek Indians. Furthermore, these years were the peak of the termination movement in California, and it is understandable that Indian groups would downplay their public identity under such conditions.

After 1969, the evidence grows even more sparse. Two individuals, Les and Dick Pierce, identify Les and their father, Adrian Pierce, as Toro Creek Indians in 1978 and 1992, respectively; the next clear evidence of collective identity is not provided until 2001. In that year, Hilda May Carpenter wrote a personal note to Toni Moody, providing an application for "the new Salinan Indian Tribe" and observing that her father, Edward Pierce, "thinks this is a good idea for the Toro Creek Indians to join with the others." Strikingly, there is no further evidence discussing this merger, even though it appears to bring "the Toro Creek Indians" into a much larger Salinan group. From 2006 to 2018, there are several memorandums of agreement between the petitioner and the State of California over access to Morro Rock for ceremonial purposes. Furthermore, while the petitioner does not include them, there are regular newsletters between 2009 and 2024. These would certainly qualify if, as is likely, the petitioner submits them in an addendum.

Even if we allow for the significant gap of sixteen years between 1953 and 1969 on the undocumented theory that there were meetings between these dates, the petitioner fails to meet this category of evidence as it can only demonstrate persistence of a collective identity continuously for thirty-five years between 1934 and 1969 and then for eighteen years from 2006 to 2024.

Furthermore, as has been discussed throughout this report, the petitioner appears to be describing a different tribal entity than it is now. This is particularly evident before 2001 when the Toro Creek Indians group appears to join the petitioner. The

evidence does not appear to demonstrate a continuous collective Salinan identity broader than two of the three historical lines—the Pedro Encinales line and the Encinales Bylon Toro Creek line. Though we cannot confirm this without access to tribal genealogical records, the petitioner appears to fail to include any evidence from members of the Agata Maria line. This is significant since as of its 2024 petition, 172 of the petitioner's 248 members (69%) descend from the Agata Maria line. An identification of a narrower collective Toro Creek Indians identity is not the same as that of the current petitioner.

Finally, the petitioner claims this category of evidence qualifies under Section 83.11(b)(2), High Evidence, and can be used to meet criterion (c) in addition to criterion (b). This is mistaken. This category is one of several within § 83.11(b)(1), and it must be combined with at least one additional form of evidence to show that a significant and meaningful portion of the petitioner's members constituted a distinct community at a given point in time.

**§ 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 evidence regarding this category of evidence, and it appears that the petitioner does not meet its requirements.

**§ 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 evidence regarding this category of evidence, and it appears that the petitioner does not meet its requirements.

**§ 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.**

Since the petitioner has not demonstrated political influence or authority for any of the categories under § 83.11(c)(1), the petitioner does not appear to meet this category of evidence.

**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(b) 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 members residing in that area.**

The petitioner has not submitted evidence regarding this category of evidence, and it appears that the petitioner does not meet its requirements.

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

The petitioner has not submitted evidence regarding this category of evidence, and it appears that the petitioner does not meet its requirements.

**§ 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 has not submitted evidence regarding this category of evidence, and it appears that the petitioner does not meet its requirements.

**§ 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 petitioner claims to meet this category of evidence through two personal notes from 1992 and 2001 and a series of materials dating between 2004 and 2024 that document the petitioning entity's successful effort to secure official agreements and permits allowing its members to access Morro Rock for ceremonial purposes. While the petitioner asserts that the 1992 personal note and included photograph from Dick Pierce to his uncle, Eddie Pierce, are "reliable evidence that this Indian entity is in existence as an identified functioning group with social and political influence amongst its members during the 1980s leading into the 1990s," the actual text of the letter does not demonstrate the existence of a distinct community social

institution or of widespread involvement in such an institution.<sup>95</sup> Instead, the note refers to a conversation between the two men after Adrian Pierce's funeral and Dick's wish that "things could have been different 10 years ago with Toro Creek for our Tribe."<sup>96</sup> Likewise, there is no indication of community social institutions within the 2001 note from Hilda Carpenter to her sister, Toni Woody. The note refers to a proposed union of the Toro Creek Indians with others to form a "new Salinan Indian Tribe." These two notes do not qualify as evidence for this category.

None of the documents concerning the petitioner's agreements and permits to access Morro Rock demonstrate the existence of distinct community social institutions, and at no time does the petitioner evince that at least 50 percent of its members were involved in the effort to gain access to Morro Rock for ceremonial purposes.

Although the petitioner does not cite the 1969 letter from Bessie Martin to Edward Pierce as evidence in this category, it is relevant to the Salinan petitioner's case. In the letter, Ms. Martin includes a list of 17 persons that she characterizes as "the recent Toro Creek Indians mailing list you and Les asked for." She also suggests that there had been activity since the last documented meeting in 1953 when she refers to voting in 1964. However, there is no clear evidence that the Toro Creek Indians kinship group was still functioning. Moreover, if the list did in fact enumerate 17 members, that begs the question of where the rest of the membership was. As of 2024, the Salinan petitioner claimed 248 members, of which 172 were descended through the Agata Maria lineage. The 17 members listed in 1969 is clearly less than 50 percent of the members of all three lineages.

The petitioner has not met this category of evidence.

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

The petitioner has not met any of the High Evidence categories of evidence within § 83.11(c)(2), and thus, it does not meet the requirements for this category.

**Conclusions for Criterion § 83.11(b), Community, 1955 through 2024**

The Salinan petitioner fails to meet criterion § 83.11(b) for the period from 1955 through 2024 for every category. Among the reasons for this are its failure to evince relationships and social interaction between members, particularly outside of their family lines, the absence of documents demonstrating a persistent collective

<sup>95</sup> STMSLO, 2024 Petition, p. 278 of pdf.

<sup>96</sup> STMSLO, 2024 Petition, p. 278 of pdf.

identity over more than 50 years, and an inability to document the existence of distinct social communities or community institutions.

The petitioner only provides direct evidence for a few of the separate categories within § 83.11(b)(1), and attempts to argue that it qualifies under § 83.11(b)(1)(xi) through two categories with criterion (c): § 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; and § 83.11(c)(1)(iii), there is widespread knowledge, communication, or involvement in political processes by many of the entity's members. We have demonstrated in our discussion of criterion (c) that the petitioner does not meet either of these two categories.

Of the separate categories within § 83.11(b)(1), the petitioner argues that it meets: § 83.11(b)(1)(ii), social relationships connecting individual members (1955-2024); § 83.11(b)(1)(iii), rates or patterns of informal social interaction that exist broadly among the members of the entity (1955-1969, 1992-2024); § 83.11(b)(1)(v), strong patterns of discrimination or other social distinctions by non-members (1969-1985); and § 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 (1955-2024). There may be limited evidence of a collective identity into the 1950s and 1960s due to an indication that the Toro Creek Indians kinship group continued its meetings past 1953 into the late 1960s. However, even in the most generous interpretation, that would end in 1969, thus limiting the identity to 35 years. And this identity appears to be limited to one of the three historical lineages, omitting the most numerous, the Agata Maria line.

Of the other three categories within § 83.11(b)(1), the petitioner neglects to supply sufficient evidence to meet the requirements, even if the petitioner was limited to just the Toro Creek Indians group. For example, there is minimal evidence of social relationships or informal social interaction that exists broadly across the entity, even in a relatively recent period when oral interviews of members might contribute. The petitioner does not offer evidence of community events within its membership that would evince interaction such as birthdays, celebrations, weddings, and funerals. Likewise, it neglects to offer any evidence of social distinctions by non-members.

The petitioner asserts that it meets one category of High Evidence within § 83.11(b)(2): § 83.11(b)(2)(iv), 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 1955-2024). The petitioner provides limited indirect evidence suggesting that the Toro Creek Indian kinship group continued its meetings past 1953 into the late 1960s, but it is unable to demonstrate that it encompassed at least 50 percent of the members, thus failing to meet the requirements even if the petitioner was limited to the Toro Creek group.

The petitioner does not evince that there were any other distinct community social institutions in its recent history.

Aside from the lack of evidence, the other major problem underlying the entire petition, including criterion (b), is the fact that the current Salinan petitioner appears to be very different from the Toro Creek Indians group that it tries to document through the 20<sup>th</sup> century, and the petitioner consistently fails to confront this fact throughout its petition, including the sections concerning criterion (b). Specifically, the evidence submitted by the petitioner does not document community within a Salinan tribal entity broader than two of the three historical lineages—the Pedro Encinales line and the Encinales Bylon Toro Creek line. Though we cannot confirm this without genealogical records, the petitioner appears to fail to include any evidence of community participation of members of the Agata Maria line. This is significant since as of its 2024 petition, 172 of the petitioner's 248 members (69%) descend from the Agata Maria line. Documenting the narrower Monterey/Toro Creek entity is not the same as documenting the current petitioner, and the current petitioner is substantially different from the entity that is being described.

The Acknowledgment regulations require that a petitioner must demonstrate that it comprises a distinct community and that it has existed since 1900. The Salinan petitioner has failed to meet any of the categories of evidence within the community criterion. Therefore, it does not meet criterion § 83.11(b) for the entire period from 1955 through 2024.

### **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.

**§ 83.11(c)(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:

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

§ 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.

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

§ 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).

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

§ 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.

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

§ 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.

§ 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 of time if the evidence demonstrates any one of the following:

**§ 83.11(c)(2)(i), Entity leaders or internal mechanisms exist or existed that:**

**§ 83.11(c)(2)(i)(A), Allocate entity resources such as land, residence rights, and the like on a consistent basis;**

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

**§ 83.11(c)(2)(i)(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**

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

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

**Comments on the Salinan Evidence for Criterion § 83.11(c), Political Influence or Authority, 1900 through 1954**

The evidence provided by the petitioner for the period from 1900 through 1954 for criterion (c) is extremely limited and lacks clear indications of demonstrations of political influence or authority over its members. In lieu of providing the necessary materials to meet the criterion, the petitioner employs a series of precedents from past Department findings to argue that it meets three categories of High Evidence within criterion (b), and thus meets § 83.11(c)(2)(ii), the petitioner has met the requirements in § 83.11(b)(2) at a given time, for the entire 1900-1954 period.<sup>97</sup> The petitioner appears to believe that it does not need to document political influence or authority for significant portions of the 1900-1954 period. However, we have concluded that the petitioner has failed to meet any of the High Evidence categories within criterion (b) and thus has not met § 83.11(c)(2)(ii). Thus, the petitioner must rely on its limited documentation to prove its case.

<sup>97</sup> These categories are: § 83.11(b)(2)(i) from 1900 to 1929; § 83.11(b)(2)(ii) from 1900 to 1929; and § 83.11(b)(2)(iv) from 1930 to 1954.

The petitioner argues that the historical band at the beginning of the 20<sup>th</sup> century consisted of two geographically separate Indian settlements: at “The Indians” or Milpitas in Monterey County, and at Toro Creek in San Luis Obispo County. In addition to these two, the Kelsey census identified a third settlement, at Mansfield in Monterey County, where the Mora family resided. While the petitioner uses the 1900 and 1910 censuses to establish the members of the Milpitas group, neither census identifies a settlement or village. However, the 1905-1906 Kelsey census identifies individuals at the Milpitas and Mansfield locations and indicates that there were rancherias or Indian settlements. The petitioner has been unable to produce census data from the three censuses, Federal or Kelsey, that identify the Indians of the Toro Creek area in San Luis Obispo County. Instead, the petitioner uses a combination of a 1982 court declaration from archaeologist Robert Gibson, Homestead Act applications, newspaper articles, and secondary sources to locate the Toro Creek area and its residents.

None of these records identify leaders, a council, or an alternative mechanism among the Indians in Monterey County in the 20<sup>th</sup> century that served 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.” The nearest approximation may be Eusebio Encinales’ 1882 purchase of 100 acres at the northwest tip of the Milpitas Grant and his later purchases of land at what the petitioner alleges would become known as “The Indians Adobe” or “The Indians Ranch.” Eusebio passed away in 1893; the petitioner does not identify him as a leader or describe any political actions or influence. Other members of this family purchased nearby property, at least some allegedly in the first decade of the 20<sup>th</sup> century. However, the petitioner does not provide any evidence indicating that these lands were entity resources rather than individually owned properties or that these Indians organized themselves in a manner where political influence or authority were exerted. In fact, after the 1910 census, the petitioner contributes very few documents describing the Milpitas area and its residents aside from occasional newspaper articles on aging and recently deceased Encinales family members.

Instead, the petitioner shifts its attention to Toro Creek in San Luis Obispo County by the 1920s. This area had been occupied by Salinan Indians during much of the 19<sup>th</sup> century, and the Baylons/Bylons “were involved in a large socio-political network operating in this part of San Luis Obispo County.”<sup>98</sup> Sometime in the second half of the 19<sup>th</sup> century, Clara Encinales married Onesimo Bylon, and in time, had four children. This union appears to be the first documented connection between the Monterey and the San Luis Obispo groups. The petitioner asserts that Clara and her family settled at Toro Creek or Tecolote in the latter part of the 19<sup>th</sup> century, and her daughter, Maria Antonia Baylon, married Edward Romeo Pierce in

<sup>98</sup> STMSLO, 2024 Petition, p. 195 of pdf.

1900. As described in the petition, Maria's children, or Clara's grandchildren, would become the core group of Toro Creek Indians by the 1930s, even though the family (the Pierces) departed the area sometime around 1910.

It is not clear how many Indians resided at Toro Creek during the first twenty years of the 20<sup>th</sup> century. According to one source, about eight Indians, or two families, lived at a Toro Creek Indian camp in 1920-1921.<sup>99</sup> In 1929, the Luigi Marre & Cattle Company filed a lawsuit against three Toro Creek Indians, Raymond Roses, Joe Baylon, and Maria Bylon in an effort to evict them. The Indians lost the lawsuit later that year, and while the U.S. Government appealed the decision, claiming that the three were wards of the government, the First Appellate District Court eventually ruled against the three. According to the petitioner, after attempts to physically remove the Indians, Marre "relented and let them live out the rest of their lives on the site. The stipulation was that no other people could move to the settlement."<sup>100</sup>

Much like at Milpitas in Monterey County, none of the provided evidence of the Indians at Toro Creek before 1934 meets the basic requirements of criterion (c), in that it identifies leaders, a council, or an alternative mechanism among the Indians in San Luis Obispo County that served "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." The petitioner cites archaeologist Robert Gibson in identifying a possible leader, Thadeo, as "a central figure", but he appears to have passed away in the 19<sup>th</sup> century. The only event described by the petitioner in any detail involving the Toro Creek Indians before 1934 is the 1929 case involving the efforts of the Luigi Marre Land & Cattle Company to evict three Indians from Toro Creek. However, the petitioner is unable to provide evidence of a political process from Toro Creek Indians in response to the lawsuit, including that of a leader or governing mechanism of a tribal entity that would have represented the three in what was certainly a matter of consequence.

In February 1934, a group of individuals, likely five siblings from the Pierce family, formed what appears to be a kinship group known as "the Toro Creek Indians." These individuals adopted by-laws for the new organization that included a list of tribal members, goals for the group, and the basic requirements for membership. The five Pierce siblings were also named tribal leaders. This document is not publicly available in its entirety, so we cannot evaluate all of the petitioner's claims concerning it, particularly the list of tribal members. The five Pierce siblings were the only participants in the next four meetings, between 1935 and 1940. There were two additional meetings, in 1948 and 1953. In 1948, the only participants appear to

<sup>99</sup> STMSLO, 2024 Petition, p. 243 of pdf.

<sup>100</sup> STMSLO, 2024 Petition, pp. 249-250 of pdf.

be four of the five siblings; Bill Pierce had passed away in 1945 in an accident. It is unclear who attended the 1953 meeting.

The petitioner interprets the Toro Indian group as a governing body engaged in political processes and argues that it allocated entity resources and organized economic subsistence activities among the members. However, the minutes of the meetings, at least as cited in the petition, do not support its interpretation. Only four or five individuals consistently attend the meetings, and all are siblings within one family, the Pierces. The petition fails to demonstrate “widespread knowledge, communication, or involvement in political processes by many of the entity’s members” and offers no evidence that membership considered the issues discussed and actions taken to be of importance. Furthermore, there are almost no political processes discussed in the minutes, and no indication of disagreements or internal conflicts. The participants discussed the requirements of different business enterprises, such as commercial abalone fishing and ranching, as well as actions to assist family members in need, particularly the elderly and new parents. There is no evidence that the businesses were entity enterprises; instead, they appear to be individual or family businesses under the operation of the Pierces. And as with the rest of the petition, there is no indication of involvement in any way from members of the Agata Maria lineage.

Rather than a governing body, it appears that the Toro Creek Indians group was a kinship organization run by the Pierce siblings to benefit their extended family. The petitioner seems to argue this within its section on criterion (b), and after reviewing the publicly available evidence, that interpretation fits with the makeup of the group, its pattern of attendance, and its actions between 1935 and 1953. The petitioner fails to demonstrate that this kinship group had or used political influence or authority as defined by the acknowledgement regulations.

#### **Comments on the Salinan Documentation for Categories of Evidence for Criterion § 83.11(c), Political Influence or Authority, 1900 through 1954**

**§ 83.11(c)(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:**

**§ 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 has not submitted evidence regarding this category of evidence, and it appears that the petitioner does not meet its requirements.

**§ 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 appears to claim that it meets this category of evidence throughout the first half of the 20<sup>th</sup> century due to the lawsuit and attempted eviction of Toro Creek Indians in 1929 and via the issues discussed in the meetings of the Toro Creek Indians from 1935 to 1953. According to the petitioner, there had been an Indian settlement at Toro Creek for decades before the Luigi Marre Land & Cattle Company filed a lawsuit to evict the Bylon family in 1929. It is unclear how many members of the family resided there in 1929. Documents from the litigation indicate three remained; apparently, the large Pierce family had moved away sometime around 1910. The petitioner does not identify any entity leaders or governing bodies at the time, and provides no evidence that this matter was important to many of the membership of the entity, including the members still in Monterey County and any members of the Agata Maria line. Moreover, there are three sets of meeting minutes of the Toro Creek Indians in the 1930s, and the petitioner does not mention any discussion of the litigation or its effects in its description of the three meetings. However, in 1947, there is a reference to Roman Roses “wanting to possibly trade 40 acres of property in order to get the Toro Creek cemetery back” and another in 1953 about a visit to the cemetery and an effort to regain rights to the plot. These are insufficient to demonstrate widespread support for the issue. Many years later, Pierce descendants Les and Dick, would advocate for access to the Indian cemetery there, and Dick would launch a lawsuit in 1982. However, those later actions do not apply to the first half of the 20<sup>th</sup> century.

The meeting minutes produced by the Toro Creek Indians group between 1934 and 1953 are cited as the other key pieces of evidence supporting the petitioner’s claim of meeting this category of evidence. The evidence provided suggests that this group was a Pierce family kinship organization, rather than a governing body. At its first meeting in February 1934, a group of individuals, likely five siblings from the Pierce family, formed what appears to be a kinship group known as “the Toro Creek Indians.” The five Pierce siblings were also named “tribal leaders,” though there is no evidence that any members of the entity viewed them as such. At these meetings, the Pierce siblings (Bill Pierce [until his death in 1945], Les Pierce, Dutch Pierce, Bessie Wood, and Eddie Pierce) met to discuss topics ranging from the designation of duties within a business for the commercial abalone fishing season and other business opportunities such as a new café to delivering supplies to elderly family members and new parents. While the petitioner does not provide a publicly available list of members through these years, it lists 26 tribal members in 1930, and of that number, 14 were adults. There does not appear to be any members listed of the now numerous Agata Maria lineage. The record lacks any evidence that the Pierce enterprises were tribal rather than individual or family businesses or that they were considered important by members other than the Pierce siblings.

There is discussion in 1953 about the Court of Claims settlement and the ICC case, and a note that each of the meeting participants “can keep the families informed.” But no evidence is provided to evince that this was important to tribal members.

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

The petitioner appears to claim that it meets this category of evidence throughout the first half of the 20<sup>th</sup> century through two avenues: the meetings of the Toro Creek Indians from 1935 to 1953; and its argument that its members would have retained social contact with close kin as well as those who had lived with them in distinct communities and thus would have communicated or disseminated information about political processes. While we do not have access to complete copies of the minutes and by-laws, the petitioner provides sufficient information of these meetings to evaluate this claim. In February 1934, a group calling themselves “The Toro Creek Indians” adopted a set of by-laws and began meeting. The by-laws included a list of members, goals, and social requirements for the group. At the first meeting, the five Pierce siblings (Bill Pierce, Les Pierce, Dutch Pierce, Bessie Wood, and Eddie Pierce) were named as “tribal leaders.” However, we cannot ascertain how many of the petitioner’s members participated in the process or even were aware of it in 1934. The petitioner provides no publicly available evidence to suggest that knowledge and involvement was widespread.

We have concluded that “The Toro Creek Indians” was a kinship organization rather than a governing body. In the next four meetings, taking place over six years between 1935 and 1940, only five members appear to attend and participate. These are the same five Pierce siblings who were named (or who named themselves) as leaders in 1934. They spent much of their time discussing the abalone business and other business enterprises. They also concerned themselves with supporting needy members of the family, particularly the elderly and new parents. There are minutes for two more meetings in this period, 1947 and 1953, with information on attendance for only 1947. The surviving four siblings attended; Bill Pierce had passed away in 1945 in an accident. Again, much of the agenda was focused on business matters of a ranch and the abalone fishing enterprise. The petitioner neglects to describe any political processes, beyond the creation of the by-laws, in any of the minutes supplied between the 1930s and 1953 and fails to provide any evidence of political activity. In its 1993 Final Determination for the Snohomish, the DOI found that:

Meeting minutes during this era [1970-1983] reflect only a small number of members in attendance at the group’s annual meeting. . . . Attendance at monthly council meetings, which were open to members, also does not appear

to involve a significant number of members. . . . There is no evidence to demonstrate political activity outside of meetings.<sup>101</sup>

As with the Snomish petition, the evidence to demonstrate that there was widespread knowledge or communication about political processes within the membership is insufficient.

The petitioner also alleges that it meets this category of evidence because most of its membership were either close kin or had resided in distinct communities of Indians and that the Department has previously determined that these two arrangements were sufficient to meet the requirements without additional evidence. It cites two separate findings by the DOI to support its claim. In 2002, in its Reconsidered Final Determination of the Chinook Indian Tribe/Chinook Nation, in regards to continued interaction of families from Chinookville after they had been forced to leave, the DOI found that:

Close family ties between parents, children and siblings would not have severed immediately. People generally maintain ties to close kin until they die . . . and this assumption should be applied in this case. . . . [I]t would seem likely, and the anecdotal evidence supports the contention that, close relatives would have remained in continuous contact following the diaspora from Chinookville for another generation, allowing the petitioner to meet criterion (b) to 1910.<sup>102</sup>

And in 1993, in its Proposed Finding regarding the Snoqualmie Indian Tribe, the DOI found that:

The regulations require that a distinct social community be maintained within which substantial social interaction and social relationships are maintained and which is distinct from non-Indian populations in the area. They do not require that the group or substantial portions of it live in a geographic area which is exclusively or almost exclusively occupied by members, e.g., a village or neighborhood. Such exclusive geographic settlement is sufficient evidence in itself to demonstrate that a group constitutes a distinct social community which meets the requirements of criterion (b). . . . In addition to kinship ties, many or most of the individuals alive in the decades between 1914 and 1956 had been born in and had previously lived in the distinct communities. They can reasonably be expected therefore to have maintained social relationships based on previous residence

<sup>101</sup> U.S. Department of Interior, Office of Federal Acknowledgement, Final Determination, Snohomish Tribe of Indians, 2003, p. 44.

<sup>102</sup> U.S. Department of Interior, Office of Federal Acknowledgement, Reconsidered Final Determination, Chinook Indian Tribe/Chinook Nation, 2002, p. 87.

in those communities, even though this was not demonstrated by specific evidence.<sup>103</sup>

There are several problems with the petitioner's interpretation and application of these findings. First, the findings concerned criterion § 83.11(b), rather than § 83.11(c). Second, despite the Department's interpretation for community, the Chinook petitioner failed to demonstrate that it met criterion (c) between 1855 and 1925 and had a negative Reconsidered Final Determination issued against it, so the Department has clearly insisted that the petitioner present evidence that demonstrates knowledge, communication, or involvement in political processes. Moreover, in the Snoqualmie finding, the DOI found that the Snoqualmie petitioner had strong evidence of maintaining a distinct community separate from non-Indians, including a distinct language and culture and in regular social gatherings. Unlike the petitioner, the Snoqualmie Indian Tribe did not depend solely on assumed networks based on kinship. Furthermore, the petitioner has not been able to demonstrate a distinct social community at either "The Indians" in Monterey or at Toro Creek. For example, its Summary Table of Indians located at the Toro Creek Indian Settlement (pp. 242-243 of pdf) appears to list every Indian who may have lived there between the mid-1800s and the 21<sup>st</sup> century with no regard for the timing of movements of many of these families in the region. It fails to effectively describe any aspect of the Toro Creek community and makes no effort to present a coherent, distinct community at a given point in time. It interprets the Indian Population tables in the 1900 and 1910 census for Monterey County as demonstrating that all the enumerated individuals within live in a single, distinct community when neither census denotes a settlement or a village.

Next, the petitioner has submitted no evidence, anecdotal or otherwise, showing that these assumed social networks were used for political purposes such as disseminating information about important issues or to encourage attendance at meetings. In fact, the petitioner has not conclusively documented any political process in the period. The only possible candidate is the creation of the Toro Creek Indians group and its by-laws, and that group may well be a Pierce family kinship group with no political authority or influence over the members of all three lineages. Even if the Toro Creek group is deemed to be a political body, it is unclear what the entity's members would have been communicating about or involving themselves in since the minutes do not reveal any political matters. Last, the petitioner fails to provide any evidence of the participation of, or even the existence of, members of the Agata Maria lineage in the Toro Creek Indians group and its kinship networks.

**§ 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).**

<sup>103</sup> U.S. Department of Interior, Office of Federal Acknowledgement, Proposed Finding, Snoqualmie Indian Tribe, 1993, pp. 8-9.

We have determined that the petitioner has not met any of the categories within § 83.11(b), including the three categories of High Evidence that it claims: § 83.11(b)(2)(i) for 1900-1910; § 83.11(b)(2)(ii) for 1910-1930; and § 83.11(b)(2)(iv) for 1934-1953. Thus, it cannot qualify under this category of evidence.

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

The petitioner has not submitted evidence regarding this category of evidence, and it appears that the petitioner does not meet its requirements.

**§ 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 evidence regarding this category of evidence, and it appears that the petitioner does not meet its requirements.

**§ 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 evidence regarding this category of evidence, and it appears that the petitioner does not meet its requirements.

**§ 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 evidence regarding this category of evidence, and it appears that the petitioner does not meet its requirements.

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

**§ 83.11(c)(2)(i), Entity leaders or internal mechanisms exist or existed that:**

**§ 83.11(c)(2)(i)(A), Allocate entity resources such as land, residence rights, and the like on a consistent basis.**

The petitioner appears to argue that it meets this category of evidence through the economic activities discussed in the meetings of the Toro Creek Indians between 1934 and 1953 and the residence of some of the petitioner's predecessors at Toro Creek. The businesses included commercial abalone fishing, ranching, and perhaps a café. The petitioner has not demonstrated that the enterprises are entity resources rather than individual or family businesses. The meeting minutes strongly suggest that the Pierce family, and particularly Dutch Pierce, owned and operated these enterprises with little input or participation from other members outside of the immediate family. Moreover, there is no evidence of entity resources such as land or residence rights. The petitioner cites articles that indicate that Indian families lived at a Toro Creek settlement in the first decades of the 20<sup>th</sup> century, through the 1920s, but does not evince that they had any land or residence rights to allocate or that they did so, particularly as members of the petitioning entity. Without demonstrating entity resources and allocation of those resources, the petitioner cannot meet this category of evidence.

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

The petitioner has not submitted evidence regarding this category of evidence, and it appears that the petitioner does not meet its requirements.

**§ 83.11(c)(2)(i)(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.**

The petitioner has not submitted evidence regarding this category of evidence, and it appears that the petitioner does not meet its requirements.

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

The petitioner appears to assert that it meets this category of evidence through two avenues: economic activities discussed in the meetings of the Toro Creek Indians between 1934 and 1953, including commercial abalone fishing, ranching, and perhaps a café; and economic subsistence activities at their Toro Creek settlement

such as trapping and selling honey, perhaps into the 1920s. In order to evince this category, a petitioner must demonstrate that “entity leaders or internal mechanisms” of the entity have organized or influenced economic subsistence activities among the members. The economic subsistence practices, such as trapping and selling honey, discussed in the petition describe practices by individuals, and the sources provided do not document entity or group efforts to organize or influence the practices. Of the planning and activities documented in the meeting minutes, it does not seem that the enterprises are organized or influenced by a tribal entity. Rather, the meeting minutes strongly suggest that the Pierce family, and particularly Dutch Pierce, owned and operated these enterprises with little input or participation from other members outside of the immediate family. If the petitioner is able to demonstrate that these businesses were tribal, and the larger tribal group had a role or an “internal mechanism” in organizing or influencing these activities, that would be strong evidence for the 1930s through the mid 1950s. Alternatively, if Dutch Pierce was an acknowledged entity leader and organized economic activity through these businesses among the larger tribal group, rather than just his immediate family, that could help meet the requirements. As it stands, the petitioner does not meet this category of 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 has met three categories of evidence within § 83.11(b)(2) within different years: § 83.11(b)(2)(i) for 1900-1910; § 83.11(b)(2)(ii) for 1910-1930; and § 83.11(b)(2)(iv) for 1934-1953. We have concluded in our analysis of these categories in the community section of our evaluation that the petitioner has not met the evidentiary requirements of any of these categories.

**Conclusions for Criterion § 83.11(c), Political Influence or Authority, 1900 through 1954**

The Salinan petitioner fails to meet criterion § 83.11(c) for the period from 1900 through 1954 for every category. Among the reasons for this are its failure to evince member awareness of and participation in political processes or concerning any political matters and the lack of clear documentation of its internal political processes, including the system of leadership or governance, within the entire period.

Of the categories of evidence within § 83.11(c)(1), the petitioner argues that it meets three: § 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;

§ 83.11(c)(1)(iii), there is widespread knowledge, communication, or involvement in political processes by many of the entity's members; and § 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). Of § 83.11(c)(1)(iv), we have concluded in our analysis of these categories in the community section of our evaluation that the petitioner has not met the evidentiary requirements of any of these categories. In § 83.11(c)(1)(ii) and § 83.11(c)(1)(iii), the petitioner fails to provide sufficient evidence to demonstrate that it has met their requirements, and of the documents it does include, they do not adequately make the requisite case. In fact, the petitioner argues that the same exact set of documents fulfills both categories. Yet none of the documents demonstrate that many of the entity's members were aware of or involved in its political processes or that they considered the issues addressed by the petitioner's leaders or governing bodies to be of importance. In fact, it is doubtful whether there were any political processes or leaders. The petitioner is unable to identify any until the formation of the Toro Creek Indians group in 1934, and that group appears to be a Pierce family kinship group rather than a political or governing body. Curiously, the petitioner never identifies any tribal leaders, despite the fact that five Pierce siblings, and the likely attendees of the first meeting, were declared as leaders in 1934. There is no evidence that other members of the entity viewed them as leaders. At no time during these years does the petitioner clearly identify a political process in lieu of selected leaders. There is an absence of evidence of an interactive political process through the entire 1900-1954 period.

The petitioner asserts that it meets two categories of High Evidence within § 83.11(c)(2)(i): § 83.11(c)(2)(i)(A), allocate entity resources such as land, residence rights, and the like on a consistent basis; and § 83.11(c)(2)(i)(D), organize or influence economic subsistence activities among the members, including shared or cooperative labor. However, the petitioner fails to demonstrate that there are entity resources to be allocated or a political process to allocate them. The petitioner is able to document some economic activities among its members, specifically those of the Pierce enterprises, but cannot demonstrate that they were organized outside of the Pierce sibling group or that their benefits were shared broadly across the membership.

The petitioner also claims that it meets § 83.11(c)(2)(ii), the petitioner has met the requirements in § 83.11(b)(2) at a given time, through High Evidence within (b), community. These categories of evidence within § 83.11(b)(2) are: § 83.11(b)(2)(i) for 1900-1910; § 83.11(b)(2)(ii) for 1910-1930; and § 83.11(b)(2)(iv) for 1934-1953. We have concluded in our analysis of these categories in the community section of our evaluation that the petitioner has not met the evidentiary requirements of any of these categories.

Aside from the consistent lack of evidence, the other major problem underlying the entire petition, including criterion (c), is the fact that the current Salinan petitioner

appears to be very different from the Toro Creek Indians group that it tries to document through the 20<sup>th</sup> century, and the petitioner consistently fails to confront this fact throughout its petition, including the sections concerning criterion (c). Specifically, the evidence submitted by the petitioner does not document political authority or influence within a Salinan tribal entity broader than two of the three historical lines—the Pedro Encinales line and the Encinales Bylon Toro Creek line. Though we cannot confirm this without genealogical records, the petitioner appears to fail to include any evidence of members of the Agata Maria line. This is significant since as of its 2024 petition, 172 of the petitioner’s 248 members (69%) descend from the Agata Maria line. Documenting the narrower Monterey/Toro Creek entity is not the same as documenting the current petitioner, and the current petitioner is substantially different from the entity that is being described.

The Acknowledgment regulations require that a petitioner must demonstrate that it has exerted political authority or influence over its members as an autonomous entity from 1900 until the present. The Salinan petitioner has failed to meet any of the categories of evidence within the political authority/influence criterion. Therefore, it does not meet criterion § 83.11(c) for the period from 1900 through 1954.

#### **Comments on the Salinan Evidence for Criterion § 83.11(c), Political Influence or Authority, 1955 through 2024**

As in the earlier period from 1900 through 1954, the evidence provided by the petitioner for the years after 1954 for criterion (c) is extremely limited and lacks clear indications of demonstrations of political influence or authority over its members. The petitioner argues that it meets one category of High Evidence within criterion (b), and thus meets § 83.11(c)(2)(ii), the petitioner has met the requirements in § 83.11(b)(2) at a given time, for the 1986-2024 period.<sup>104</sup> However, we have concluded that the petitioner has failed to meet any of the High Evidence categories within criterion (b) and thus has not met § 83.11(c)(2)(ii). Thus, the petition must rely on the limited documentation that it has submitted.

As of 1955, the petitioner appears to argue that the Toro Creek Indians group was its governing body, and that it engaged in political processes and had been allocating entity resources and organizing economic subsistence activities among the members. In the group’s 1934 by-laws, the five Pierce siblings may have named themselves as “tribal leaders;” however, there is no indication of how this was done or if the membership acquiesced to this. None of the provided records identify leaders, a council, or an alternative mechanism among the Indians in the 20<sup>th</sup>

<sup>104</sup> The High Evidence category is: § 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.

century that served “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.” Instead, it appears that the Toro Creek Indians group was a kinship organization run by the Pierce siblings to benefit their extended family.

After the Toro Creek Indians’ 1953 meeting, there is no evidence of further activity, political or otherwise, until 1969. In November of that year, Bessie Martin wrote her brother, Eddie, declaring her desire to “make sure that everybody gets their money like we did 20 years ago.” She also attached a recent mailing list for the Toro Creek Indians, presumably to assist with contacting members about the status of the ICC claims. Ms. Martin also noted that “when voting took place in 1964, it was good that we all kept in touch to help answer questions. We can talk about it at the next meeting.” This is the only reference to the ICC claims or the 1955 judgement claims, and there is no evidence that indicates that these claims were of importance to the membership or widely discussed. The letter implies that there had been meetings since 1953 and that there would be another. But the petitioner has not provided any direct evidence of meetings after 1953, or that there was political activity within the larger group. This is the last reference to meetings of the Toro Creek Indian group in the petition.

In the 1970s and early 1980s, there was an effort by at least three of the Pierces to secure access to the Toro Creek cemetery. In 1975, the Chairman of the Board of Supervisors for San Luis Obispo County wrote to Edward Pierce, presumably in response to a letter or other communication, about the cemetery and suggested that “you and your tribe” should “take your concerns directly to the present property owners.” However, there is no indication that the status of or access to the cemetery was an issue of importance to many of the members of the petitioner. None of the three newspapers articles during these years or Dick Pierce’s 1982 lawsuit demonstrate its importance to the membership. All five documents show that Dick, Les, and Edward Pierce were active at the time but fail to evince a larger tribal body that was concerned about the matter and considered their actions to be of importance. The 1992 note from Dick Pierce to his uncle, Edward Pierce, is unclear but may suggest that Dick was wistful about the failed effort to access the cemetery. It too fails to evince any tribal political activity, communication, or concern.

The petitioner provides no further evidence until 2001. On May 26 of that year, Hilda Carpenter wrote a note to Toni Woody that indicates that members of “the Toro Creek Indians” were engaged in an effort to combine with “the others” to create a “new Salinan Indian Tribe.”<sup>105</sup> The petitioner interprets the note as evidence that the members of the Toro Creek Indians were involved in an effort to join “the Salinan Indian Tribe to continue the tribal entity.”<sup>106</sup> The note does not

<sup>105</sup> STMSLO, 2024 Petition, pp. 160-161 of pdf.

<sup>106</sup> STMSLO, 2024 Petition, p. 278 of pdf.

identify the membership of the Toro Creek Indians or identify the non-Toro Creek Indians or whether they belonged to an existing Indian entity. It is also unclear whether the Salinan Indian Tribe was yet a functioning Indian entity. Carpenter writes that a “new Salinan Indian Tribe” was being created. However, it is likely that the Salinan Tribe of Monterey and San Luis Obispo Counties was already in existence, and this note refers to an effort to have Toro Creek Indians join that group. In any case, the petitioner provides no evidence of political influence or authority for either group.

It is striking how little information is provided about this seemingly significant act, even though it is well within the period where oral interviews could document and explain it. Yet the petitioner provides no material evincing that its leadership or membership, aside from Eddie Pierce and Hilda Carpenter, considered the matter, debated it, or even found it worthy of comment. Nor is there evidence from the other group. The absence of documentation about such a significant political act is quite suggestive of a lack of awareness, communication, and involvement of the petitioner’s members about political matters.

After the 2001 note, there is no further documentation referring to the Toro Creek Indians, so it is presumed that the combination went into effect. The petition then includes several documents discussing the efforts of the Salinan petitioner to secure access to an ecological reserve, known as Morro Rock, for ceremonial purposes. However, there is no material evincing a tribal political process concerning the issue such as elections, meetings, or even communication among its membership. There is no evidence indicating that the membership found the matter to be of importance and that the leadership of the entity was responding to their wishes. In fact, the petitioner neglects to provide any documentation that there were tribal leaders in the last twenty-five years. In sum, there is a lack of documentation of an interactive political process for the entire period between 1955 and 2024.

#### **Comments on the Salinan Documentation for Categories of Evidence for Criterion § 83.11(c), Political Influence or Authority, 1955 through 2024**

**§ 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 has not submitted evidence regarding this category of evidence, and it appears that the petitioner does not meet its requirements.

**§ 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 argues that it meets this category of evidence for this period through a series of documents: three personal notes dating from 1969, 1992, and 2001; a group of sources discussing Les and Dick Pierce's advocacy over access to the Toro Creek cemetery; and the materials from 2004 to 2024 regarding the current petitioner's access to Morro Rock for ceremonial purposes. In November 1969, Bessie Martin wrote to her brother, Eddie Pierce, declaring her desire to "make sure that everybody gets their money like we did 20 years ago." She also attached a recent mailing list of 17 persons for the Toro Creek Indians, presumably to assist with contacting members about the status of the ICC claims. Ms. Martin also noted that "when voting took place in 1964, it was good that we all kept in touch to help answer questions. We can talk about it at the next meeting." This is the only reference to the ICC claims or the 1955 judgement claims, and there is no evidence provided that indicates that these claims were of importance to the membership. Likewise, the 1992 photo and note from Dick Pierce to Eddie Pierce does not discuss any issue or action by an entity leader or a governing body. It may refer to Dick Pierce's lawsuit in 1982, but there is no evidence that this was of concern to the membership. The 2001 personal note from Hilda Carpenter to Toni Woody refers to an otherwise undescribed effort "for the Toro Creek Indians to join with the others." "The others" are undescribed, though we suspect that it may be with an existing Salinan Tribe that had filed an intent to petition with the DOI in 1993. This existing Salinan tribe may have been made up of members of the Agata Maria line. It is striking how little information is provided about this seemingly significant act, even though it is well within the period where oral interviews could explain it. Yet the petitioner provides no material evincing that its leadership or membership, aside from Eddie Pierce and Hilda Carpenter, considered the matter, debated it, or even found it worthy of comment. The lack of documentation about such a significant act is quite suggestive of a lack of concern from the petitioner's members about political matters.

The set of sources discussing Les and Dick Pierce's advocacy and litigation concerning the Toro Creek cemetery include a 1975 letter from Chairman Richard Krejsa to Edward Pierce, three articles from 1978 through 1980, and documents from Dick Pierce's 1982 lawsuit challenging a Negative Declaration of Environmental Impact for a proposed development on the Toro Creek site where archaeological sites lie, including the Toro Creek Indian cemetery. None of these sources offer any evidence that many of the membership considered the matter of access to and preservation of the Toro Creek Indian cemetery. Krejsa recommends to Edward Pierce that "you and your tribe . . . take your concerns directly to the present property owners to see if something (hopefully) could be worked out," but he does not reveal whether or not the members of Pierce's group, aside from Pierce, were concerned with the matter. Similarly, the articles demonstrate that Les and Dick Pierce were involved in the issue, but not that any others were. The lawsuit was filed by Dick Pierce, and not by a tribal entity, and no records are provided that indicate that the membership was involved or viewed the issue as of importance.

The materials from 2004 to 2024 regarding the current petitioner's access to Morro Rock for ceremonial purposes clearly document the Memorandums of Agreement and the annual permits between the State of California and the petitioner to allow the petitioner special access to Morro Rock for ceremonial purposes. However, the petitioner fails to provide any evidence that its membership considered these issues and actions to be of importance.

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

The petitioner asserts that it meets this category of evidence for this period through a series of documents: three personal notes dating from 1969, 1992, and 2001; a group of sources discussing Les and Dick Pierce's advocacy over access to the Toro Creek cemetery; and the materials from 2004 to 2024 regarding the current petitioner's access to Morro Rock for ceremonial purposes. In November 1969, Bessie Martin wrote to her brother, Eddie Pierce, declaring her desire to "make sure that everybody gets their money like we did 20 years ago." She also attached a recent mailing list with 17 names for the Toro Creek Indians, presumably to assist with contacting members about the status of the ICC claims. Ms. Martin also noted that "when voting took place in 1964, it was good that we all kept in touch to help answer questions. We can talk about it at the next meeting." This is the only reference to the ICC claims or the 1955 judgement claims, and while it refers to contacting members and voting, there is no evidence provided that indicates the membership communicated about it or were involved with a political process such as attending a meeting. Nor is there any information on the voting process such as the level of member participation or how and who organized it.

Likewise, the 1992 photo and note from Dick Pierce to Eddie Pierce does not definitely discuss any issue or action by an entity leader or a governing body. It may refer to Dick Pierce's lawsuit in 1982, but there is no evidence that this was of concern to the membership. The 2001 personal note from Hilda Carpenter to Toni Woody refers to an otherwise undescribed effort "for the Toro Creek Indians to join with the others." "The others" are undescribed, though we suspect that it was with an existing Salinan Tribe, possibly the entity that submitted an intent to petition with the DOI in 1993. This existing tribe may have been made up of members of the Agata Maria line. It is striking how little information is provided about this seemingly significant act, even though it is well within the period where oral interviews could document and explain it. Yet the petitioner provides no material evincing that its leadership or membership, aside from Eddie Pierce and Hilda Carpenter, considered the matter, debated it, or even found it worthy of comment. Nor is there evidence from the other group. The lack of documentation about such a

significant political act is quite suggestive of a lack of awareness, communication, and involvement of the petitioner's members about political matters.

The set of sources discussing Les and Dick Pierce's advocacy and litigation concerning the Toro Creek cemetery include a 1975 letter from Chairman Richard Krejsa to Edward Pierce, three articles from 1978 through 1980, and documents from Dick Pierce's 1982 lawsuit challenging a Negative Declaration of Environmental Impact for a proposed development on the Toro Creek site where archaeological sites lie, including the Toro Creek Indian cemetery. None of these sources offer any evidence that many of the membership were aware of or involved in the matter of access to and preservation of the Toro Creek Indian cemetery. Krejsa recommends to Edward Pierce that "you and your tribe . . . take your concerns directly to the present property owners to see if something (hopefully) could be worked out," but he does not reveal whether or not the members of Pierce's group, aside from Pierce, were concerned or engaged with the matter. Similarly, the articles demonstrate that Les and Dick Pierce were involved in the issue, but not that any others were. The lawsuit was filed by Dick Pierce, and not by a tribal entity, and no records are provided that indicate that the membership was aware of or engaged in the litigation.

The materials from 2004 to 2024 regarding the current petitioner's access to Morro Rock for ceremonial purposes clearly document the Memorandums of Agreement and the annual permits between the State of California and the petitioner to allow the petitioner special access to Morro Rock for ceremonial purposes. However, the petitioner fails to provide any evidence that its membership was aware of or involved in the political processes related to the negotiations and agreements.

**§ 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).**

We have determined that the petitioner has not met any of the categories within § 83.11(b), including the category of High Evidence that it claims: § 83.11(b)(2)(iv) for 1992-2024. Thus, it cannot qualify under this category of evidence.

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

The petitioner has not submitted evidence regarding this category of evidence, and it appears that the petitioner does not meet its requirements.

**§ 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 evidence regarding this category of evidence, and it appears that the petitioner does not meet its requirements.

**§ 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 evidence regarding this category of evidence, and it appears that the petitioner does not meet its requirements.

**§ 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 evidence regarding this category of evidence, and it appears that the petitioner does not meet its requirements.

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

**§ 83.11(c)(2)(i), Entity leaders or internal mechanisms exist or existed that:**

**§ 83.11(c)(2)(i)(A), Allocate entity resources such as land, residence rights, and the like on a consistent basis.**

The petitioner has not submitted evidence regarding this category of evidence, and it appears that the petitioner does not meet its requirements.

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

The petitioner has not submitted evidence regarding this category of evidence, and it appears that the petitioner does not meet its requirements.

**§ 83.11(c)(2)(i)(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.**

The petitioner has not submitted evidence regarding this category of evidence, and it appears that the petitioner does not meet its requirements.

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

The petitioner has not submitted evidence regarding this category of evidence, and it appears that the petitioner does not meet its requirements.

**§ 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 has met one category of evidence within § 83.11(b)(2): § 83.11(b)(2)(iv) for 1992-2024. We have concluded in our analysis of the High Evidence categories in the community section of our evaluation that the petitioner has not met the evidentiary requirements of any of the categories within § 83.11(b)(2), and thus, it does not meet the requirements for this category.

### **Conclusions for Criterion § 83.11(c), Political Influence or Authority, 1955 through 2024**

The Salinan petitioner fails to meet criterion § 83.11(c) for the period from 1955 through 2024 for every category. Among the reasons for this are its failure to evince member awareness of and participation in political processes or concerning any political matters and the lack of clear documentation of its internal political processes, including the system of leadership or governance, within the entire period.

The petitioner only provides direct evidence for four of the thirteen separate categories and attempts to argue that it qualifies under the criterion through three others: § 83.11(b)(1)(viii), the persistence of a collective identity continuously over a period of more than 50 years; § 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); and § 83.11(c)(2)(ii), the petitioner has met the requirements in § 83.11(b)(2) at a given time. The petitioner has not met any of the categories of evidence in § 83.11(b)

at greater than or equal to the percentages set forth under § 83.11(b)(2). We have also demonstrated in our discussion of criterion (b) that the petitioner does not meet any of the categories of High Evidence within § 83.11(b)(2). The petitioner claims to meet one of them, § 83.11(b)(2)(iv), distinct community social institutions encompassing at least 50 percent of the members, such as kinship organizations, formal or informal economic cooperation, or religious organizations, even though it fails to demonstrate the existence of community social institutions after 1953 or that at least 50 percent of its members are involved in such social institutions.

Of the remaining categories of evidence within § 83.11(c)(1), the petitioner argues that it meets: § 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; and § 83.11(c)(1)(iii), there is widespread knowledge, communication, or involvement in political processes by many of the entity's members. In both cases, the petitioner fails to provide sufficient evidence to demonstrate that it has met their requirements, and of the documents it does include, they do not adequately make the requisite case. In fact, the petitioner argues that the same limited set of documents fulfills both categories. Yet none of the documents demonstrate that many of the entity's members were aware of or involved in its political processes or that they considered the issues addressed by the petitioner's leaders or governing bodies to be of importance. This is in part due to the fact that there are no records of meetings of the Toro Creek Indians group or the Salinan Tribe after 1954, and the petitioner has not documented knowledge of or involvement with these groups or any other governing body by other members. At no time during these years does the petitioner clearly identify its leaders or a political process in lieu of selected leaders. This omission continues into the twenty-first century, even after a tribal council is formed. There is a complete lack of evidence in an interactive political process through the entire 1955-2024 period.

Another major problem underlying the entire petition, including criterion (c), is the fact that the current Salinan petitioner appears to be very different from the Toro Creek Indians group that it tries to document through much of the 20<sup>th</sup> century, and the petitioner consistently fails to confront this fact throughout its petition, including the sections concerning criterion (c). Specifically, the evidence submitted by the petitioner does not document political authority or influence of a Salinan tribal entity broader than two of the three historical lines—the Pedro Encinales line and the Encinales Bylon Toro Creek line. Though we cannot confirm this without genealogical records, the petitioner appears to fail to include any evidence of political activity of members of the Agata Maria line. This is significant since as of its 2024 petition, 172 of the petitioner's 248 members (69%) descend from the Agata Maria line. Documenting the narrower Mission/Toro Creek entity is not the same as documenting the current petitioner, and the current petitioner is substantially different from the entity that is being described.

For the period from 2009 to 2024, with the additional submissions of evidence, the petitioner may be able to partially meet § 83.11(c)(1)(viii), there is a continuous line the of entity leaders and a means of selection or acquiescence by a significant number of the entity's members. While the petitioner does not include them in its submission, there is publicly available evidence of tribal newsletters starting in 2009, and they include tribal council election results. The petitioner may be able to meet this category of evidence from at least 2009 if it can document the council selection process and demonstrate that a significant number of the entity's members participated or acquiesced.

In sum, the petitioner has not provided sufficient evidence to meet criterion § 83.11(c) from 1955 to 2024. Therefore, the petitioner has failed to demonstrate that it has maintained political influence or authority over its members since 1900.

### **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:**

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

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

The petitioner must have a governing document or some other written document that defines membership criteria. This criterion 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 descent from ancestors in the historical tribe claimed by the petitioner, 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. 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).

In its 2024 petition, the Salinan entity stipulated that it has submitted its 2004 constitution and 2024 enrollment ordinance to the DOI. It is very likely that the petitioner's 2024 submission has adequate membership criteria in its governing document or could readily provide a written description of its current membership criteria. It likely meets criterion § 83.11(d).

### **Criterion § 83.11(e), Descent**

#### Explanation of the Criterion and its Requirements

The criterion reads as follows in the 2015 regulations:

**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).**

**§ 83.11(e)(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 descendancy 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):**

**§ 83.11(e)(2)(i), Federal, State, or other official records or evidence;**

**§ 83.11(e)(2)(ii), Church, school, or other similar enrollment records;**

**§ 83.11(e)(2)(iii), Records created by historians and anthropologists in historical times;**

**§ 83.11(e)(2)(iv), Affidavits of recognition by tribal elders, leaders, or the tribal governing body with personal knowledge; and**

**§ 83.11(e)(2)(v), Other records or evidence.**

Criterion § 83.11(e) 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 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."

There are several components to this criterion, including: identifying a historical tribe (or two or more tribes that have joined together and acted as a single autonomous entity) and its members; demonstrating that the historical tribe existed at a particular point before 1900; and documenting that the petitioner's members descend from individuals who belonged to that historical tribe. Meeting criterion § 83.11(e) is usually more straightforward than criteria § 83.11(b) and (c). What constitutes evidence of tribal community and political influence is often subject to interpretation, but Indian ancestry is not. One can either prove descent from a historical tribe or one 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 Salinan petitioner has a problem in documenting the continuous social and political interaction of the three primary tribal lineages 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), which was then the section number for the descent criterion. 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 § 83.7(e) (see the OFA's 2005 Draft Acknowledgment Precedent Manual, pp. 232-33.)

Most petitioners have been able to identify a historical tribe and use a tribal roll or an acceptable equivalent to attempt to document descent from that tribe. The Salinan petitioner has identified the Indian populations of the San Antonio de Padua Mission (Mission San Antonio) and the San Miguel Arcángel Mission (Mission San Miguel) as its historical tribe, and using Mission records, it has identified 29 residents of these two missions as ancestral to its current group's members. All 29 individuals, and all 248 current members, are claimed as members of three identified "historical tribal lines": the Agata Maria line, the Encinales Bylon Toro Creek line, and the Pedro Encinales line. The petitioner asserted that the Indian mission population "originally came from the surrounding Indian villages that existed just prior to the founding of the two missions based on the result of Spanish policy at the time."<sup>107</sup>

In order to satisfy criterion (e), a petitioner must demonstrate descent from a historical Indian tribe (or from historical Indian tribes that combined and

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<sup>107</sup> STMSLO, 2024 Petition, p. 290 of pdf.

functioned as a single autonomous political entity); this requirement has proven to be difficult to meet for California petitioners whose descendants entered the Spanish Mission system in the late 1700s and early 1800s. As of February 2025, there have been no successful petitions from California Mission petitioners, and of the three Mission groups that have received proposed findings, none of the three have met criterion (e) in their respective proposed findings. Moreover, none have had their petitions reviewed under the 2015 revised regulations.<sup>108</sup> Thus, there is limited guidance and precedent on how to interpret historical descent from tribes forced into the Spanish mission system in California.

However, in its evaluations of the Juaneño bands, the DOI determined that evidence “establishes by a reasonable likelihood that as a result of Spanish policy, the Indian population of the [SJC] Mission became an entity consisting of Indian tribes or groups that had combined. Socially connected and culturally similar Indian populations from politically allied villages” moved to the Mission and that “pre-existing social and political relationships at the villages continued.” Moreover, “Spanish policy at the Mission created a political structure for its Indian population which made the combined groups a single political entity.”<sup>109</sup>

Furthermore, in its 2016 Phase One Technical Review letter concerning the petition of the Fernandefio Tataviam Band of Mission Indians (FTB), the DOI argued that the evidence showed that “an entity of Indians evolved” at the Mission as Indians from their historic villages came into the Mission, “intermarried extensively over time, and formed a distinct social entity. The Fernandefios also continued some of the village forms of political influence and authority within a mission system where the outnumbered Franciscans looked to village leaders for help.”<sup>110</sup>

While each petitioning group is different, these evaluations suggest that the DOI is willing to interpret the commingling of Indian populations at a Spanish Mission as creating a “historical Indian tribe” at that Mission. If the DOI does so again in the current petition, the Salinan petitioner would be successful in the first step of its claim that the Indian populations at Mission San Antonio and Mission San Miguel constitute their historical Indian tribe.

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<sup>108</sup> The three Mission petitioners with proposed findings are: Fernandefio Tataviam Band of Mission Indians, Juaneño Band of Mission Indians, and Juaneño Band of Mission Indians, Acjachemen Nation. While the Ohlone/Costanoan Muwekma Tribe also claimed that some members resided at Mission San Jose, the DOI identified their historical tribe as two Indian settlements in Alameda County and derived their historical tribal rolls from the 1905-1906 Kelsey rolls and the 1910 Federal census.

<sup>109</sup> U.S. Department of Interior, Office of Federal Acknowledgment, Proposed Finding, Juaneño Band of Mission Indians (Petitioner #84B), 2007, pp. 4-5; U.S. Department of Interior, Office of Federal Acknowledgment, Final Determination, Juaneño Band of Mission Indians, Acjachemen Nation (Petitioner #84A), 2007, p. 4.

<sup>110</sup> U.S. Department of Interior, Office of Federal Acknowledgment, Phase I- Technical Assistance Review, Fernandefio Tataviam Band of Mission Indians (Petitioner #158), October 17, 2016, p. 4.

However, unlike in the Juaneño or FTB petitions, the Salinan petitioner is claiming that the Indian populations of two separate Spanish missions were its historical Indian tribe. In this case, the petitioner must demonstrate that the Indian populations of these two separate Missions combined and functioned as a single autonomous political entity. In our judgement, the petition has failed to do this. The petitioner has not provided evidence showing how these two populations combined and functioned as a single political entity in Monterey County or in San Luis Obispo County either prior to 1900 or afterward. Instead, the petitioner has described the marriage patterns of the Encinales family, the unjust loss of lands within the Milpitas Mexican Land Grant, and the shift of Clara Encinales and her children to Toro Creek. Moreover, while the petitioner traces members of the Pedro Encinales line and the Encinales Bylon Toro Creek line, it appears to fail to include any evidence of participation of members of the Agata Maria lineage. This is significant since as of its 2024 petition, 172 of the petitioner's 248 members (69%) descend from the Agata Maria line.

Furthermore, the petitioner stated that the Toro Creek Indian group joined "the Salinan Indian Tribe" in 2001 "to continue the tribal entity."<sup>111</sup> No information has been provided on the circumstances of that combination or about the existing Salinan entity, its membership, community function, or politics. The petition is not clear about this, but the Salinan Indian Tribe may have been the already existing Salinan Tribe of Monterey and San Luis Obispo Counties that submitted an intent to petition to the Department in 1993. The petitioner is responsible for documenting that entity's history and demonstrating how it meets the Department's criteria before its combination with the Toro Creek Indians around 2001. Yet, it has not done so.

The Salinan petitioner's evidence concerned with documenting descent for criterion § 83.11(e) could not be fully evaluated 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 DOI will review these records and determine whether its members have adequately demonstrated descent.

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)). 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.

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<sup>111</sup> STMSLO, 2024 Petition, p. 278 of pdf.

## **Criterion § 83.11(f), Unique membership**

### **Explanation of the Criterion and its Requirements**

The criterion reads as follows in the 2015 regulations:

**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:**

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

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

This criterion is required because the DOI did not want federally recognized tribal components or factions to be able to use the Federal acknowledgment process to break up acknowledged tribes. Even though the Federal government sometimes consolidated unrelated Indian entities on the same reservation, and those historical tribes then became one entity (e.g., the Mandan, Hidatsa, and Arikara Nation of North Dakota), 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 petitioner's current governing document provides that persons who are enrolled with another tribe, band, or rancheria cannot be enrolled with the Salinan Tribe unless they relinquish membership with the other group. The petitioner has also asserted that "[a]ll members to the Salinan Tribe of San Luis Obispo and Monterey Counties have been required to sign a statement attesting that they are not, nor have ever been, a member of any Federally Recognized Tribe as defined by the Office of Federal Acknowledgment."<sup>112</sup> Those statements have been provided to the DOI. Therefore, the petitioner appears to meet criterion § 83.11(f).

## **Criterion § 83.11(g), Congressional termination**

### **Explanation of the Criterion and its Requirements**

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<sup>112</sup> STMSLO, 2024 Petition, p. 308 of pdf.

The criterion reads as follows in the 2015 regulations:

**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 Salinan petitioner has provided the OFA with a statement indicating that the band has not been the subject of legislation terminating a Federal relationship.<sup>113</sup> 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 tribal entities in California whose Federal trust relationship were terminated by Congress were a number of recognized Rancherias (small reservations), primarily in northern California. Many of those tribal entities have subsequently had their Federal relationship restored by Congress. It does not appear from the historical record that the Salinan petitioner was a part of any of those terminated tribal entities.

Therefore, it appears that the current petition meets criterion § 83.11(g).

## Conclusions

These comments have provided an evaluation of the evidence the Salinan Tribe of Monterey and San Luis Obispo Counties has submitted to the DOI in its 2023 petition for Federal acknowledgment as a tribe (Petition #406) in accordance with 25 CFR § 83. 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 Salinan petitioner proceeded under the 2015 regulations. The revised 2015 regulations provide that the evaluation period for criteria § 83.11(a), (b), and (c) begins in 1900.

Our evaluation found that the Salinan petitioner does not have adequate evidence to meet four of the seven mandatory criteria for Federal acknowledgment under the 2015 regulations. The four criteria that have not been met are: criterion § 83.11(a), identification as an Indian entity since 1900; § 83.11(b), community since 1900;

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<sup>113</sup> STMSLO, 2024 Petition, p. 301 of pdf.

§ 83.11(c), political influence or authority since 1900; and § 83.11(e), descent from an historical tribe. Failure to meet criterion § 83.11(e) would result in the DOI issuing an expedited proposed finding denying the petitioner Federal acknowledgment.

We have found that the Salinan 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.