United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

CERTIFIED MAIL

OCT 17 2016

Mr. Rudy Ortega, Jr.
1019 Second Street, #1
San Fernando, California 91340

Dear Mr. Ortega:

The Office of Federal Acknowledgment (OFA) within the Office of the Assistant Secretary - Indian Affairs (AS-IA) has completed a Phase I Technical Assistance (TA) review of the documented petition of a group known as the "Fernandeño Tataviam Band of Mission Indians" (FTB) Petitioner #158. The OFA issues this TA review letter under section 83.26(a)(1)(i) of Part 83 of Title 25 of the Code of Federal Regulations (25 CFR Part 83), "*Procedures for Federal Acknowledgment of Indian Tribes,*" which became effective on July 31, 2015 (2015 regulations).

This TA review letter describes deficiencies in materials the OFA received from the FTB petitioner in 2009 and 2015 (supplementary material under the 2015 regulations). The 2015 regulations provide this TA review letter to ensure the OFA does not reject the group's documented petition because of deficiencies that would prevent it from meeting the Governing Document (83.11(d)), Descent (83.11(e)), Unique Membership (83.11(f)), or Termination (83.11(g)) criteria.

In its documented petition, the FTB petitioner claims previous Federal acknowledgment and includes evidence of previous Federal acknowledgment. This Phase I TA review (83.26(a)(1)(ii)) will determine whether that evidence meets the requirements of previous Federal acknowledgment (83.12).

After reading this TA review letter, the FTB petitioner must submit a written response that withdraws the documented petition for further preparation; submits additional information and/or clarification; or asks OFA to proceed with the review (83.26(a)(1)(i)(A)-(C)).

This TA review letter indicates there are deficiencies in the documented petition that will prevent the FTB petitioner from meeting criterion 83.11(e), Descent, and previous Federal acknowledgment (83.12). For this reason, the OFA recommends the FTB petitioner review the information provided below, and in the separate enclosures, in formulating its response.

Historical Indian Tribe

The regulations define "historical" as before 1900 (83.1). Thus, under criterion 83.11(e), the petitioner must document descent from a historical Indian tribe in existence before 1900 or one that evolved or combined out of historical Indian tribes in existence before 1900.

Petitioner's Claim of the Historical Indian Tribe

The FTB petitioner claims to be an Indian entity that is currently represented by three families – Ortega, Garcia, and Ortiz –and that descends historically from three or four lineages that the petitioner claims emerged from the Spanish mission of San Fernando Rey de España (SFR, 1797-1834). The FTB petitioner defines a "lineage" as an entity that organized village social and political relationships prior to first sustained contact (FTB 2015 PNS Criterion (a): 1-3). According to the FTB petitioner, lineages survived the mission experience because they "were portable, movable, flexible, and continue culture, social and political relations, while territorial village sites were abandoned after the Indians were taken into San Fernando Mission" (FTB 2009 PN (b): 3). In both the 2009 and 2015 submissions, the FTB has claimed the lineages were from "Western Gabrieliño" (discussed below) villages, specifically Tujubit from the village of Tujunga, Suitcabit from the village of Suitcanga, and Cabuepet from the village of Cahuenga. The petitioner also mentions a fourth lineage, Chaguayabit, in its 2009 submission; it will be discussed separately in this section.

One way scholars classify the Indian villages of Southern California is by using ethno-linguistic terms derived from information provided by the historical record, specifically the names of the first Spanish missions that converted and baptized local village members. Scholars have divided "Gabrieliño" into the "Eastern Gabrieliño" (San Gabriel Valley) and "Western Gabrieliño" (San Fernando Valley), a term derived from Mission San Gabriel Arcángel, which was the mission that first became associated with the villages of both regions in 1771 (twenty-six years before the establishment of Mission SFR). "Fernandeño" refers to an intermarried group of Indians that became associated with Mission SFR. "Fernandeño" was a term that applied to the hundreds of Western Gabrieliño who relocated from their villages to SFR, when it officially became the mission of the San Fernando Valley in 1797, as well as hundreds of other people from regions to the north who relocated to SFR, specifically the Indians from Tataviam and Serrano villages who had no prior interaction with a Spanish mission (Johnson 1997: 251-257).

The FTB petitioner claims its ancestors were Indian individuals of the Western Gabrieliño lineages of Tujubit (Leandra Culeta), Suitcabit (Maria Rita Alipas), and Cabuepet (Rosaria Arriola). According to the petitioner's claims, these lineages were not only distinct "tribal" entities, but also united into a coalition for group purposes like ceremonies and trade (FTB 2015 PNS Criterion (b): 4-5). The petitioner also argues that starting in the nineteenth century members of the three claimed lineages began to identify themselves by the family names of Ortega (Suitcabit), Garcia (Tujubit), and Ortiz (Cabuepet), even though the petitioner has not provided documentation to support this theory. The FTB petitioner, thus, describes the coalition as today consisting of the three families and existing in its constitutional government:

> Throughout the entire historical period from contact to 2009, the petitioning community was formed of distinct coalition of lineages relations among Chaguayabit, Cabuepet, Tujunga, and Suitcabit. The present-day members and families continue as a coalition of families that trace their lineage to the earlier lineages and whom maintain continuing relations (FTB 2009 PN (b): 115).

The FTB petitioner provided individual SFR baptismal entries from the Huntington Library's Early California Population Project (ECPP) as its primary form of evidence for these claimed

lineages. In the individual records, the Franciscans regularly recorded a village name for the place of birth. However, the FTB petitioner's claims and analyses are that the Franciscans sometimes recorded lineage and not village names. For example, the FTB narrative contains the Western Gabrieliño place name of Cabuepet. Entries with this place name, according to the petitioner, indicate that the baptized Indians came from "among the Cabuepet, the lineage located at Cahuenga" (FTB 2009 PN Criterion (b): 7). The FTB petitioner's claim is that "Cahuenga refers to a place in the village ("nga" being a locative suffix), but the community or lineage kinship group is known as Cabuepet ("pet," "bet," and "bit" being lineage suffixes)" (FTB 2015 PNS Criterion (a): 6).

The FTB petitioner presents a fourth lineage in its 2009 claim, "Chaguayabit" from the Tataviam village of Chaguayganga. The petitioner makes the claim that two of the FTB petitioner's families share a distant kinship relationship through the Chaguaybit lineage, even though Chaguayabit is not identified in the 2015 supplement as a historical lineage of the Ortega, Garcia, or Ortiz families. The FTB petitioner claims that the Ortegas and Garcias follow a rule against intermarriage, because of "a common ancestry . . . among the Chaguayabit." (FTB 2015 PNS Criterion (a): 5). A number of other examples exist where the petitioner relies on identical place names from Spanish period baptismal records to make claims about surviving lineage relationships among and between current Ortiz, Ortega, and Garcia family members.

Summary

OFA looked for, although it could not find, other kinds of evidence to support the petitioner's claim that its ancestors prior to 1900 were members of "portable, movable, [and] flexible" lineages (2009 PN Criterion (b): 3). The FTB has not provided any historical evidence to support its claim that "the lineage political and social organization was carried into the Mission, and survived the mission period, and remains critical for understanding contemporary social and political relations among the [FTB] community" (FTB 2009 PN (b): 3).

OFA has provided "check-off" boxes at critical points in this letter to help the petitioner easily identify evidence that OFA is requesting from FTB and for FTB to submit in response to this Phase I TA review letter.

If the FTB petitioner chooses to maintain the claim that the historical Indian tribe consisted of a coalition of three distinct, politically autonomous Western Gabrieliño lineages named Suitcabit, Cabuepet, and Tujubit, then OFA requests that the petitioner provide new evidence addressing the following concerns.

☐ The FTB petitioner should submit evidence other than secondary sources and the SFR baptismal records. Specifically, the petitioner should provide historical documents that demonstrate the existence of the three distinct social and political entities named Suitcabit, Cabuepet, and Tujubit, as they moved through time separately, and also came together as a coalition at various points in time.

☐ The FTB petitioner should focus on the period after Mexican secularization in 1835, and look for distinct entities in historical documents up to 1900 that were identified as Suitcabit, Cabuepet, and Tujubit. OFA also cannot accept the petitioner's assumption that, at some point in

the nineteenth century, its claimed ancestors substituted the family names of Ortega, Garcia, and Ortiz, for Suitcabit, Tujubit, and Cabuepet, without documentation to support this claimed theory of the historical Indian tribe.

☐ The petitioner should provide OFA with evidence that shows when and why its claimed ancestors made the change from the claimed Western Gabrieliño lineage names to the family names of Ortega, Garcia, and Ortiz.

Definition of the Historical Indian Tribe

OFA found a number of documents from the period prior to 1900 that identify a historical Indian tribe of Fernandeño Indians, submitted with the 2009 original petition and 2015 supplement (permissible under the July 2015 regulations). The current record contains primary as well as secondary sources including the SFR mission registers, legal records, government reports, ethnographers' field notes and studies, land grants, newspapers, and Federal census records. In addition, the Department supplemented the current record with evidence in the course of its verification research.

Evidence in the current record shows that an entity of Indians evolved at Mission SFR from the historical combination of Indian individuals of four ethno-linguistic groups that scholars have named "Tataviam," "Western Gabrieliño," "Ventureño Chumash," and "Serrano." Before the mission period, individuals of each group had shared villages in common as their primary social and political units. SFR's Franciscan priests recorded over 130 villages distributed throughout the four ethnic-linguistically distinct, though socially and politically interconnected regions (Johnson 1997: 251-257). Between 1797 and 1814, hundreds of Indians left these villages and relocated to Mission SFR, where the Franciscans baptized them with Spanish first names and recorded their marriages, births, and deaths, as well as typically noting their native names and identifying them further with the Spanish terms: *india/indias* and *indio/indios*. After the Franciscans baptized the adult Indian individuals, they oftentimes would refer to them by the terms *neophyta/neophytas* and *neophyto/neophytos*.

As the Indians came into the Mission from their villages, they intermarried extensively over time, and formed a distinct social entity. The Fernandeños 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. SFR's Franciscans recorded 62 baptisms that mentioned village leaders as *capitans*. Other primary and secondary evidence suggest that not only did these *capitans* continue to exercise political influence and authority, but also that some of these leaders became *alcaldes* within the mission system.

OFA's preliminary assessment of the evidence also suggests that a Fernandeño entity continued in the San Fernando Valley area from Mexican secularization of the Spanish missions in 1834 up through the 1870s. From 1843 to 1845, the Mexican Governor of California, Manuel Micheltorena, awarded five land grants to petitioning Fernandeño *neophytos*. Micheltorena granted one square league (roughly 7,627 acres) to Pedro Joaquin and "38 others" on May 3 1843 (CSA Exp 576). On May 15, 1843, he granted 1000 square varas (0.17 of an acre) to Samuel (CSA Exp 427); that month he also granted one-quarter of a league (1,906 acres) at Cahuenga to José Miguel Triunfo (CSA Exp 191). On July 17, 1843, the Governor granted one

square league (roughly 7,627 acres), known as El Encino, to Roque, Francisco, and Román (CSA Exp 458). Micheltorena awarded the fifth grant on August 3 1845, one-half league (roughly 3,813 acres), known as El Escorpión, to Urbano, Odón, and Manuel (CSA Exp 461). These five Fernandeño grants existed within a geographically defined area, the 56,000 acres known as Rancho Ex-Mission San Fernando (SFR Map 0795), in the San Fernando valley. For the period from the 1840s to the 1870s, because many of the Fernandeño Indians remained on the five grants within the geographically defined area of Rancho Ex-Mission San Fernando, OFA was able to find documented social interaction among various Fernandeño individuals, families, and their leaders.

Evidence of a period of land sales in the 1850s-1870s indicates that there was a shrinking land base and a diminishing Indian population. In 1839, there were over 500 Fernandeño Indians (Phillips 2010: 179). For 1850, OFA verified 231 Fernandeño Indians on the Federal census, but found that number had dropped considerably to 117 Fernandeño Indians on the Federal census of 1860. A smallpox epidemic decimated most of the Indians in Los Angeles County in the 1860s, and OFA verified approximately 40 Fernandeño Indians in San Fernando township by 1870 (OFA Census Analysis).

OFA has found that there was a historical Indian tribe of Fernandeño Indians, comprised of village members from four ethno-linguistic groups who combined through marriage and interacted at the Mission during the 37 years from the establishment of Mission SFR in 1797 to secularization in 1834. The FTB petitioner might demonstrate descent from this historical Indian tribe. The current evidence seems to suggest that the parents and/or grandparents of the FTB's three claimed Indian ancestors (Maria Rita Alipaz; Leandra Culeta; and Rosaria Arriola) were members of the population of villagers who migrated to Mission SFR and intermarried.

☐ Therefore, the FTB may wish to pursue this alternate theory and might meet the requirements for Federal acknowledgment under the 2015 regulations by demonstrating that the current group has had "substantially continuous" existence from 1900 to the present from the historical Indian tribe of Fernandeño Indians that existed after Mexican secularization, on the five land grants, and within the boundaries of Rancho Ex-Mission San Fernando.

Unambiguous Previous Federal Acknowledgment

Under the 2015 regulations, the OFA reviews the petitioner's claims and evidence of unambiguous previous Federal acknowledgment during the Phase I TA review. Section 83.1 provides the definition of "Previous Federal Acknowledgment" and the term is defined as follows:

> *Previous Federal Acknowledgment* means action by the Federal government ***clearly premised*** on identification of a tribal political entity and ***indicating clearly*** the recognition of a relationship between that entity and the United States. [bolded for emphasis] (80 FR 37888)

If a petitioner meets the requirements for unambiguous previous Federal acknowledgment under the 2015 regulations at 83.12, then the FTB petitioner is eligible for evaluation under a reduced evidentiary burden. Three of the seven criteria—83.11(a), 83.11(b), and 83.11(c)—have

modified requirements for petitioners with unambiguous previous Federal acknowledgment. Once the petitioner establishes it was previously acknowledged, it must demonstrate it meets the Community criterion (83.11(b)) at present and the Indian Entity Identification (83.11(a)) and Political Authority (83.11(c)) criteria since the time of previous Federal acknowledgment or 1900, whichever occurs later.

Section 83.12 states:

> The petitioner may prove it was previously acknowledged as a federally recognized Indian tribe, or is a portion that evolved out of a previously federally Indian tribe, ***by providing substantial evidence*** of unambiguous Federal acknowledgment, meaning that the United States Government recognized the petitioner as an Indian tribe eligible for the special programs and services provided by the United States to Indians because of their status as Indians with which the United States carried on a relationship at some prior date including, but not limited to, evidence that the petitioner had:
>
> (1) Treaty relations with the United States;
> (2) Been denominated a tribe by act of Congress or Executive Order;
> (3) Been treated by the Federal Government as having collective rights in tribal lands or funds; or
> (4) Land held for it or its collective ancestors by the United States.
> [bolded for emphasis] (80 FR 37891)

In its review, the Department evaluates evidence to see if it meets three conditions for previous Federal acknowledgment:

> (1) If the Federal Government unambiguously acknowledged, through its actions, a relationship with the Indian tribe that the petitioner claims;
> (2) If the petitioner is the same group or has evolved from, the federally acknowledged group; and
> (3) When that previous Federal acknowledgment ended.

The following review has found that the petitioner has provided insufficient evidence to meet the first condition (1) of previous federal acknowledgement. Since the petitioner did not demonstrate (1), OFA did not evaluate the second condition (2) to see if the petitioner is a continuation of the entity claimed to be previously acknowledged. Without evidence of an entity that was previously federally acknowledged the third condition (3) is currently not applicable to the petitioner's claim. Therefore, the Department intends to evaluate the FTB petitioner under all seven criteria in 83.11 without modification by 83.12.

Analysis and Evaluation of the Petitioner's Claim of Unambiguous Previous Federal Acknowledgment

The FTB petitioner's 2009 material includes a claim that the petitioner had unambiguous previous Federal acknowledgment until 1904. This claim is centered around Rojerio Rocha, one of the neophytes named on the land grant of Pedro Joaquin and "38 others" on May 3 1843. Its claim of unambiguous previous Federal acknowledgment can be summarized by quoting two

paragraphs from its 2015 supplement:

> Frank D. Lewis's petition identifies an Indian community of San Fernando Indians, with Rojerio as Captain, and who were pursuing available legal actions to recover land originally granted to them in 1843. Lewis refers to a community from which we can identify ancestors of the petitioners. Also Lewis reaffirms, as numerous other sources do, that Rojerio was Captain of the San Fernando community. In Lewis' narrative account, Rojerio was a political leader, who managed land and took action of preserve the community's last remaining collective assets. Frank D. Lewis, working directly for the Commissioner of Indian Affairs, identified a Fernandeño community with land and leadership, and with direct social and genealogical ties to the petitioning community.
>
> The Special Attorney for Mission Indians pursued a solution for the Fernadeño Indians at San Fernando through the length of his tenure until 1897. As late as 1896, Lewis was publicly and actively engaged in securing the land rights of the Fernandeños who were led by Rojerio Rocha. We believe that Lewis provides enough information to affirm previous recognition as late as 1892, and since Rojerio lived to 1904 as captain, previous recognition should extend at least to that date. (Prior Recognition 83.8, 2015 Supplement: 1).

The petitioner bases its 2009 claim for previous Federal acknowledgment on two documents: a letter in 1892 by Frank D. Lewis, a special attorney to the Mission Indians; and Horatio N. Rust's 1904 publication, Rogerio's Theological School, in the journal *Out West*, specifically Rust's recollections of a visit with Rocha in 1889 while Rust was a U.S. Indian agent for the Mission Indians (Rust 1904: 243-248). The 1892 letter was merely a recommendation to the Department. The petitioner has submitted no evidence that either the Department or the Attorney General acted to implement that recommendation. The 1904 Rust recollections concerned an individual Indian and presented vague claims of aid offered to that individual, not to members of an Indian group. The petitioner has submitted no evidence that Rust was acting as an Indian Office agent on behalf of an Indian entity in the San Fernando Valley. These two examples do not provide "substantial evidence" that meets the regulatory definition of action by the Federal Government indicating unambiguous Federal acknowledgment of a Federal relationship with a tribal political entity.

Lewis and Rocha

In his 1892 letter, Lewis stated to the Indian Office that his "attention was called" to the condition of "a company of Indians" living on the edge of the San Fernando land grant. He also stated, "Upon examining into the case I found that these people were the remaining members and descendants of the band or village to whom Manuel Micheltorena, Governor of California, granted one league of land May 3rd 1843 . . . ." The evidence shows that Lewis began his legal work on the land issue in 1886, under the direction of a Quaker Indian reform organization known as the Mohonk Conference of Indian Friends (MCIF), six years prior to his appointment as a special attorney to the Mission Indians (FTB PNS 2015 Doc. 1896-03-20). He did not indicate that the Indian Office had called his attention to this land issue or that he responded to any letter or instructions from the Commissioner.

In his 1892 letter, the "company of Indians" to whom Lewis was referring was Rocha and his household, not a Fernandeño tribe or any other Indian entity. Rocha's land appeared on an 1871 surveyor's plat map (SFR Map 0795) labeled the "Rojerio/Germana" tract (other documents in the record identified Germana as Rojerio's father). The land was also mentioned in an 1876 ejectment case, Porter et al. v Rocha et al. (HL Dist 4279), filed with the Superior Court of Los Angeles by several White land investors. The surviving court documents suggest that the only people living on the "Rojerio/Germana" tract were Rocha and his wife, three other Fernandeño Indians, and one non-Indian man from Chile.

A Fernandeño tribe or any other Indian entity was not in possession of the tract in 1885 when a local sheriff forcibly ejected Rocha and the aforementioned members of his household from the land, or in 1887 when the ejectment case went to court. Although the people who the sheriff ejected did live together, a household does not constitute an Indian entity on the land. During the court proceedings, Rocha testified that the land was "mine [my land] measured by a surveyor." He did not mention that, in testifying, he was also defending the collective property rights of a historical Fernandeño tribe or any other Indian entity (OFA Copy of Rocha Testimony 1887). In the same 1887 testimony, Rocha identified himself as the only Indian paying taxes on the land in question (OFA Copy of Rocha Testimony 1887).

Lewis assumed guardianship over Rocha's quitclaim in 1892 to try and protect Rocha from the original ejectment charges while continuing his legal representation of Rocha on behalf of the MICF, which Lewis had initiated in 1886 (FTB PNS 2015 Doc. 1896-03-20). Legal representation of one Indian landowner does not constitute action by a Federal government agency on behalf of a Fernandeño Indian entity. Furthermore, the petitioner includes no evidence that the Department ever took the legal action recommended by Lewis in 1892, the year that he effectively ended his review of Rocha's case. Lewis's recommendation was that the Federal government should annul an 1873 patent on the 56,000 acre land grant, Ex-Mission San Fernando, which the White land investors had submitted in court as evidence supporting Rocha's ejectment.

The petitioner also does not include evidence that the Department had dealings with an Indian group prior to 1892, when Lewis proposed the annulment of the patent. If the Indian Office had an existing relationship with a group, Lewis would likely have referred to the group by name, but he did not. On the contrary, the Commissioner of the General Land Office indicated in his response that his office had previously investigated the land claim at issue, at the request of other private citizens, and had informed Lewis it "could not do anything in the matter." The Commissioner also attached an earlier letter in which the Secretary of the Interior had declined to act on behalf of those citizens to pursue a suit such as recommended by Lewis. Thus, the available evidence does not show that the Department had an existing relationship with such a group or established a Federal relationship with such a group because of Lewis's letter. OFA's evaluation of the Frank Lewis materials, submitted by the petitioner in 2009 and resubmitted in 2015, does not support the petitioner's claim and its interpretation of the evidence.

The Legal Definition of "Mission Indians"

The FTB petitioner has also claimed that the 1892 letter in which Lewis referenced a "company of Indians," is evidence that he was an attorney representing a "Mission Indian" entity on behalf

of the Indian Office. The petitioner claims that its ancestors had become one of several "landless" Indian entities, which meant it should have also been acknowledged by the Federal government as a "Mission Indian" entity under the 1891 Mission Indian Relief Act (MIRA). An 1883 report stated that the Indian Office reserved the term "Mission Indians" for the approximately 3,000 Indians in the four southernmost counties of Southern California: San Bernardino, San Diego, Riverside, and Santa Barbara:

> The term "Mission Indians" dates back over one hundred years to the time of the Franciscan missions in California. It then included all of the Indians who lived in the mission establishments, or were under the care of the Franciscan fathers. Very naturally the term has continued to be applied to the descendants of those Indians. In the classification of the Indian Bureau, however, it is now used in a somewhat restricted sense, embracing only those Indians living in the four southernmost counties of California, and known as Serranos, Cahuilla, San Luisenos, and Dieguenos. (Senate Report #74 1883: 3)

The approximately 3,000 Serranos, Cahuillas, San Luiseños, and Diegueños, were the Indians identified as "Mission Indians" and also described in various sources as "landless." By executive orders in the 1870s, President Ulysses S. Grant created seventeen separate reservations for these so called "landless Mission Indians." Then, the Federal Government established a commission under the1891 MIRA that was responsible for selecting and surveying reserved tracts for the "Mission Indians" who were located in the four southernmost counties. Under the original legal definition, Indians outside of the four southernmost counties were not identified as "Mission Indians." Thus, the Indian Office did not extend MIRA to the Indians of Los Angeles County –a population that would have included the petitioner's claimed ancestors.

Rust and Rocha

The other evidence in the FTB petitioner's 2009 claim was the 1904 recollections of Indian Agent, Horatio N. Rust, pertaining to Rojerio Rocha. Although Rust referred to Rocha as "almost the last of the Mission Indians of San Fernando," he was writing about an individual, not a group. Rust provided some small amount of financial assistance to Rocha, an unspecified amount coming from a special fund totaling $200 per year "for the sick and indigent of 3000 Indians," a reference to all Mission Indians rather than to any specific band of them (Rust 1904: 248). Contrary to the petitioner's assertion, this evidence about one individual is neither "substantial evidence" nor does it demonstrate an unambiguous Federal relationship with a Fernandeño entity.

Summary

In both its 2009 and 2015 claims, the petitioner has not demonstrated that it had unambiguous previous Federal acknowledgment. It has not shown that the Federal Government took action that indicated unambiguously its recognition of a Federal relationship with a tribal political entity. The evidence presented by the petitioner is open to another interpretation than the one presented by the petitioner, and thus is ambiguous rather than "unambiguous" on the issue of previous Federal acknowledgment. The petitioner's reliance on one document for 1904, and one document for 1892, does not constitute "substantial" evidence, as required by the regulations.

The petitioner has presented no direct evidence of actions by the Office of Indian Affairs or Department on behalf of any Indian group, whether in response to Lewis's report, by Rust while in office as Indian agent, or by any other agent in 1904. Thus, the claims advanced and the evidence cited by the petitioner, are both insufficient to demonstrate that the petitioner had unambiguous previous Federal acknowledgment in 1904, or at any other time.

The conclusions of this TA review relating to previous Federal acknowledgment are preliminary, based on an evaluation of the claims presented and evidence cited by the FTB petitioner, and are subject to reconsideration during active consideration for the proposed finding based on new evidence.

☐ The petitioner has the option of responding to this TA review by submitting substantial evidence to demonstrate points this review concludes the evidence in the record has not demonstrated. However, to qualify for evaluation under section 83.12(b), the petitioner's burden is not simply to advance an interpretation of previous Federal acknowledgment based on certain evidence, but to show that the body of available evidence is not liable to another interpretation and is therefore "unambiguous."

Phase I TA Review Criteria 83.7(d), 83.7(e), Descent 83.7(f), and 83.7(g).

Criterion 83.11(d): Governing document

The regulations under 25 CFR 83.11(d) require that the petitioning group submit its governing documents. A copy of the group's present governing document including its membership criteria is required. In the absence of a written document, the petitioner must provide a statement describing in full its membership criteria and current governing procedures.

The petition documentation includes a copy of a document entitled "Constitution of the Fernandeño Tataviam Band of Mission Indians" (80449.FTBM). The group's governing body certified the document on November 15, 2002 (60001.FTO). However, OFA has identified some contradictions in these requirements that should be addressed.

The introductory sentence of Article 6 of the FTB reads, "The citizenship of the Tribe shall consist of the following persons who are not citizens of any other tribe . . . ." This would seem to preclude members from dual enrollment. However, a review of the group's membership files indicates that 430 of 690 members (or 62 percent) have no information in their files indicating whether they are enrolled with any other Federally recognized tribe or non-recognized group. The remaining 260 members (38 percent) have made a definitive statement that they do not belong to any other group or Federally recognized tribe either by checking a box on their 2008 or 2014/2015 enrollment form, or by submitting a separate statement relinquishing their membership in another non-recognized group.

☐ The petitioner may wish to have all members of the group include a separate statement in their membership file positively affirming that they are enrolled only in the FTB.

Article 6, Section 1(a) of the petitioner's citizenship (membership) requirements states that "any person identified as Fernandeño or San Fernando whose name appeared on the roll of California

Indians prepared pursuant to Section 7 of the Act of May 18, 1928" or any of its amendments in 1930, 1948, 1960, and 1968, are eligible to enroll. Article 1, Section 1(b) of the requirements states that all lineal descendants of people identified under Section 1(a) are also eligible for membership. However, an examination of the group's membership files indicates that only 367 of 690 (53 percent) current members have included any information regarding their lineal ancestor and/or identified on which roll their name appeared.

☐ The petitioner may wish to include this information for all members, as this would be helpful in verifying the claims of descent for the other 323 (47 percent) members.

Article 6, Section 1(c) states that "Any person who is a lineal descendant of an enrolled citizen of the Tribe" is eligible for membership. However, this seems to contradict Article 6, Section 1(d), which states that "All children possessing one-sixteenth or more Indian blood, born to any member of the Fernandeño Tataviam band of Mission Indians, maintaining tribal relations" are eligible for membership. It is unclear, then, if a child who is a lineal descendant of someone on the roll of California Indians, but who does not have one-sixteenth degree of Indian blood, would be eligible for membership. Further, the document does not define how this one-sixteenth blood quantum is to be computed (considering that none of the other requirements includes a blood quantum). Finally, the document does not state if the quantum must be one-sixteenth Fernandeño Tataviam blood, or if it can be satisfied by a combination of Fernandeño Tataviam and other Indian ancestry.

The petitioner may wish to clarify this particular membership criterion, especially in terms of the use of a blood quantum to determine eligibility for membership. This suggestion only addresses the petitioner's clarification for future governance. Blood quantum information is not required and is not used for descent verification in the Federal acknowledgement process.

Material submitted in the petitioner's 2015 petition supplement indicated that the petitioner has considered including future members who descend from the historical Indian tribe, but who are not currently part of the group, or even known to the group. According to the petitioner's submission, "There may be other lineage groups that could come forward for membership. They need to prove their lineal organization and descent, while at the same time showing long- term commitment to the San Fernando Indian community and agreement to live within the contemporary multi-lineal constitutional government" (FTB PNS 2015, 83.7(b); 26). This submission does not include any statement regarding descent from a person on the roll of California Indians, which is specifically mentioned in the membership criteria in the group's governing document. The current governing document does not include any provisions for the inclusion of members who may be able to document their descent from the historic Indian tribe, but who may not be able to document their descent from someone on the roll of California Indians.

☐ The petitioner may wish to address this contradiction between descent from the historical Indian tribe and descent from an individual on the 1930 California roll in future submissions.

☐ If the petitioner revises its governing document to address any of the above-mentioned issues, FTB should submit a copy of the amended document, certified by the petitioner's governing body, with its supplement to the documented petition.

The petitioner has submitted materials that are adequate to permit an evaluation under criterion 83.11(d). However, the petitioner may consider clarifying or modifying the group's membership criteria in order to avoid future difficulties.

Criterion 83.11(e): Descent from the Historical Tribe

Criterion 83.11(e) requires that a petitioner's members descend from the historical Indian tribe. This criterion also requires that the petitioner submit a list of its current membership, certified by the group's governing body.

To document descent from the historical Indian tribe, the petitioner should submit documents verifying child-to-parent relationships for each generation between the current members and their claimed ancestor in the historical Indians tribe. (See Item C below.)

A. Membership Lists

The FTB petitioner submitted a current membership list dated August 16, 2015, received by OFA on September 15, 2015. This membership list was properly certified by the petitioner's governing body and listed 690 living individuals (691 minus one deceased member) and contained all elements criterion 83.21(a)(4)(i) requires. A few entries included erroneous information or were missing information (birth dates, birth surname, residential address), but most entries were complete. The petitioner provided a brief history and description statement with the current membership list, as required by criterion 83.21(a)(4)(ii), and an "Overview of Citizenship Rolls."

The FTB petitioner also submitted four previous official membership lists: November 4, 1995, September 2003, November 20, 2008, and July 13, 2010. These four membership lists were certified by the petitioner's governing body in a letter dated August 16, 2015, and included a brief history and description of the copies submitted in 2015 with an "Overview of Citizenship Rolls," as required by criterion 83.21(a)(4)(iii-iv).

B. Claimed Historical Indian Tribe and Claimed Historical Indian Ancestors

The FTB petitioner claims the Fernandeño Indian tribe of California as the historical Indian tribe from which its members descend. A discussion of the historical Fernandeño Indian tribe is provided in a previous section of this Phase I TA review.

The FTB petitioner claims three historical Fernandeño Indian ancestors from whom its members descend: **Maria Rita Alipas** (b.1830) (petitioner's "Ortega" Line), **Rosaria Arriola** (b.1840) (petitioner's "Ortiz" Line), and **Leandra Culeta** (b.1840) (petitioner's "Garcia" Line). This Phase I TA review discusses each of these ancestral lines. Documentation details, copies and transcriptions of documents cited, and some explanatory diagrams are provided in attached genealogical work papers.

The principal problem with evaluating the FTB's members' descent from the historical Indian tribe is the petitioner's omission of sufficient evidence to adequately identify its claimed Indian ancestor (in the case of **Rosaria Arriola)** or its claimed Indian ancestors' offspring (in the case

of **Maria Rita Alipas**' son **Jose Rosario Ortega** and in the case of **Leandra Culeta**'s daughter **Maria Josefa Leyva).**

(1) **Maria Rita Alipas** is documented on her 1830 SFR Mission baptism record as Rita "of the Mission," daughter of Francisco and Paula *Neofitos*. The notation *neofitos* indicates that her parents were Indians converted to Christianity and the notation "of the Mission" indicates that her parents were residing at the Mission and that she was born there. Indians are also identifiable in the mission records as individuals with no surname. **Maria Rita Alipas** is identified only as "**Rita**" on the record of her marriage to her first husband, Benigno, but she is identified as "**Rita Alipaz** widow Neofita" on the record of her marriage to her second husband, Fernando Ortega "of Sonora." The baptism records of her children and her marriage records give her name variously as **Rita, Maria Rita Alipas, Rita India**, and **Maria Rita** (see attached "OFA Genealogical Documentation Workpaper for Maria Rita Alipas").

(1A) The FTB petitioner claims that **Jose Rosario Ortega** (b.abt.9/1857), son of **Maria Rita Alipas** and Fernando Ortega, is the same person as **Antonio Maria Ortega** (b.6/13/1848-d.3/13/1941). The name **Jose Rosario Ortega** is not seen on any record after his baptism in 1858 and no death record for a child or adult of that name has been located.

Individuals variously named "Antonio," "Antonio Ortega," and "Antonio Maria Ortega" appear in Federal census records for Santa Barbara (Santa Barbara Co. CA), Yuma (Yuma Co. AZ), and San Fernando Township (Los Angeles Co. CA) from 1860 to 1940; in baptism records; in the 1913 and 1933 interview records of John P. Harrington; in Frank F. Latta's 1924 book Saga of Rancho El Tejon, as a son ("living [1924] in San Fernando") of Fernando Ortega (this source also states that Fernando Ortega had "[a]nother son, Luis Ortega, lives in Fresno"); in a 1941 Los Angeles County death certificate and newspaper obituary; and in two affidavits recorded in 1969 and 1972. None of these records adequately document a connection between the petitioner's forebear, **Antonio Maria Ortega**, and **Jose Rosario Ortega**, the son of **Rita** and Fernando Ortega.

☐ In response to this Phase I TA review, the petitioner should submit documentation verifying that **Antonio Maria Ortega** is the same person as **Jose Rosario Ortega**. Especially important are documents showing **Antonio Maria Ortega** with his claimed parents (Fernando Ortega and **Rita**) or his siblings during his lifetime, preferably identifying the familial relationships. Documents recorded during the lifetime of **Antonio Maria Ortega**, especially linking him to his parents and siblings or stating that he was baptized as or previously went by the name **Jose Rosario Ortega**, would be particularly helpful. The petitioner might find other Catholic Church records that state **Antonio Maria Ortega**'s parentage, such as a confirmation record or marriage record. Land ownership records, court records, and city or county directories may indicate an alias used in the past.

☐ The petitioner should provide an explanation as well as any new evidence clarifying the identities of **Antonio** in the household of Jose and Rita (Indians) in Los Angeles Township in 1860, **Antonio Ortega** in the household of Pablo Reyes in Los Angeles in 1870, **Antonio Ortega** on the 1880 census in Yuma Arizona, and **Antonio Maria Ortega** the spouse of Isadora Garcia, including any relationship to **Jose Rosario Ortega** (b.abt.9/1857). Confirmation that **Antonio Maria Ortega** is the same person as **Jose Rosario Ortega** is especially important

because 76 percent (526 of 690) of the FTB petitioner's members claim descent from the historical Fernandeño Indian tribe through him. See "OFA Genealogical Documentation Workpaper for Maria Rita Alipas" for documents used in this section.

(1B) The FTB petitioner claims that **Luis Eduardo Ortega** (b.8/22/1862 per his LA baptism record), son of **Rita India** and Fernando Ortega, is the same person as **Louis Ortega** (b.8/27/1860-d.1/30/1948 per his death record).

Based on information provided in the 1880 Federal census and in Frank F. Latta's 1924 book Saga of Rancho El Tejon (this source also states that Fernando Ortega had "[a]nother son, Luis Ortega, lives in Fresno"), it is reasonable to conclude that **Louis Ortega** (1860-1948), spouse of Refugia Moreno, is the same person as **Luis Eduardo Ortega** (b.1862), whose baptismal record identifies his parents as **Rita Yndia** and Fernando Ortega and his godfather as Geronimo Lopez. The three FTB members claiming descent from **Louis Ortega** have documented their descent from him.

☐ In response to this Phase I TA review, the petitioner should provide a complete copy of **Louis Ortega**'s death record (i.e., including page 1 of the two-page amended death record). Having established **Luis Eduardo/Louis Ortega** as the son of **Maria Rita Alipas**, any additional evidence that links **Louis Ortega** as a brother of **Antonio Maria Ortega** would support the conclusion that **Antonio Maria Ortega** was also the son of **Maria Rita Alipas**. See "OFA Genealogical Documentation Workpaper for Maria Rita Alipas" for information on documents used in this section.

(2) The petitioner claims **Rosaria Arriola** is the same person as **Maria del Rosario Triunfo**, who is documented on her 1840 LA record of baptism at SFR Mission as **Maria del Rosario**, "Indio," daughter of Miguel and Rafaela. This TA review will use the name **Maria del Rosario Triunfo** as no record of the Fernandeño Indian woman using the name **Rosaria Arriola** during her lifetime has been submitted or found.

The FTB petitioner also claims that **Maria del Rosario Triunfo** (b.1840) is (a) the same person as **Rosa** (last name illegible but probably **Alinez**), mother of **Miguel Rafael Ortiz**, baptized at Los Angeles in 1859, and (b) the same person as **Rosa A.**, age 28 (b.abt.1832) on the 1860 Federal census in the household of Miguel Ortiz, age 30, with 4 children (Brigida 14, Petra 6, Juana 2, and **Rafael** 1). The petitioner also claims that **Jose Abelardo Godey** (b.2/15/1859) is (a) the same person as **Miguel Rafael Ortiz** (b. 1/25 1859), son of **Rosa Alinez(?)** and Miguel Ortiz, and (b) the same person as **Jose Ortiz** (b.2/15/1861) listed as #23047 (application #11171) on the 1933 CA Indian claims roll (1933 CA Roll).

Individuals variously named "Maria del Rosario," "Rosaria," "Maria del Rosario Triunfo," "Rosa A. Ortis," "Rosa Alinez(?)," "Rusaria Peralta," "Rosaria Carlon de Ortiz," "Rosaria Ariola," and "Rosa Arriola" appear in Federal census records for Los angeles and Kern Counties, California, from 1850 to 1900; in baptism records; in a 1912 California Death Index record for Kern County and a newspaper obituary; and in a 1928 CA Indian claims application. Only two of these documents, an 1850 Federal census record and the 1859 baptism record of **Jose Abelardo Godey**, connect **Maria del Rosario Triunfo** to her Indian parents, Jose Miguel Triunfo and Maria Rafaela Perfecta Cañedo. None of the records document a connection between the named

Rosa/Rosaria/Rusaria individuals and **Maria del Rosario Triunfo**; nor do they document a connection between **Joseph Ortiz** (b.1861) and his claimed mother, **Rosaria Ariola** (claimed a.k.a. **Maria del Rosario Triunfo**).

☐ In response to this Phase I TA review, the petitioner should provide an explanation as well as any new evidence clarifying the identities of **Rosa Alinez/Rosa A. Ortis** (b.abt.1832), **Rosaria Ariola/Carlon**, and **Rosaria/Rusaria Peralta** (b.abt.1830-1840) and their relationship to **Maria del Rosario Triunfo** (b.abt.1841), daughter of Jose Miguel Triunfo and Rafaela Cañedo. The petitioner should also clarify the relationship between **Rosaria/Rusaria Peralta** (b.abt.1840-1850) and **Joseph/Jose Ortiz** (b.Feb.1859 on the 1900 census or b.2/15/1861 on the 1928 CA claims appl. #11171), and between **Jose Abelardo Godey** (b.2/15/1859) and this same **Joseph/Jose Ortiz**, because 21 current members of the petitioner claim descent from **Maria del Rosario Triunfo** through **Joseph Ortiz** (b.2/15/1861). See "OFA Genealogical Documentation Workpaper for Maria del Rosario Triunfo" for information on documents used in this section.

(3) **Leandra Culeta** is identified on her 1840 SFR baptism record as **Leandra** (b.3/26/1840) of SFR Mission (Indian), daughter of Ramon and Eugenia, *Neofitos* (Indians) of SFR Mission. The only document providing the name "Leandra Culeta" is a 1928 CA claims application for Margaret (Rivera) Ward. This TA review will use the name **Leandra** as no record of her using the name **Leandra Culeta** during her lifetime has been submitted or found. **Leandra** is not seen in records after the baptism of her daughter **Maria Josefa** in 1865.

The FTB petitioner claims that **Maria Josefa Leyva** (b.3/19/1865), whose 1865 LA record of her baptism at SFR Mission identifies her as the daughter of **Leandra** and **Juan Leyva**, is the same person as **Josephine Leiba Garcia** (b.1/1/1875-d. 5/1/1952 per her death record), who is named with her spouse, Isadore Garcia, on the 1882 LA baptism record of their daughter Petra Garcia Leiba (b.5/23/1882 or 1883). **Josephine Leiba Garcia** may also have been identified by the surnames Porter, Gardner, and Gutierrez.

Individuals variously named "Maria Josefa Leyva," "Josefina Leiba," "Josephine Porter," "Josephine Gardner," "Jennie Gardner," "Josephine Leibas," "Josie Lavas, "Janey R. Gardner," "Josephine Garcia," and "Josephine Gutierrez" appear in Federal census records from 1900 to 1940, in two baptismal records, in three 1928 CA Indian claims applications, on a circa 1933 CA claims card, and in a 1952 California Death Index record for Ventura County. Only one of these documents, an 1865 baptism record, connects **Maria Josefa Leyva** to her Indian mother, **Leandra**. None of these records document a connection between the petitioner's forebear, **Josefina Leiba**, and **Maria Josefa Leyva**, and none of them document a connection between Petra (Garcia) Rivera Valenzuela Flores, Frances (Garcia) Cooke, Jim (James) Garcia, or Clara Maud (Gardner) Callis and their claimed mother, **Maria Josepha Leyva**. The 1928 CA claims applications of Frances (Garcia) Cook and Clara Maud (Gardner) Callis provide some information on family relationships but contain no documentation supporting the claims.

☐ In response to this Phase I TA review, the petitioner should provide an explanation as well as any new evidence clarifying the identities of **Josephine Leiba**, **Josephina Garcia**, **Josephine Porter**, **Josephine Gardner**, **Jennie Gardner**, **Janey R. Gardner**, or **Josephine Garcia Gutierrez** and their relationship to **Maria Josefa Leyva** (b.3/19/1865), daughter of Juan Leyva and **Leandra**. See "OFA Genealogical Documentation Workpaper for Maria Josefa Leyva" for

information on documents used in this section.

C. Documentation of Members' Descent from the Historical Fernandeño Indian Tribe

The FTB petitioner submitted membership files for 689 of its 690 members, containing birth records, marriage records, death records, census records, newspaper articles, "pedigree" charts, membership application forms, and other documents providing information on each member's descent as required under criterion 83.11(e)(1-2). Although the petitioner's three claimed historical Fernandeño Indian ancestors are not sufficiently documented (see above and attached OFA Genealogical Documentation Workpapers), OFA analyzed the generation-by-generation, child-to-parent documentation for each member and determined that about 44 percent (304 of 690) of the petitioner's members could document descent from their claimed historical Indian ancestors **IF** those ancestors are verified as members or descendants of the historical Fernandeño Indian tribe. The OFA would be prevented from verifying descent of the remaining 56 percent (386) of the petitioner's members from their claimed historical Indian ancestor (1) because of a missing child-to-parent documentation for one or more of 21 individuals (10 of whom are members) in an intermediate generation between the claimed ancestor and current members (358 members) or (2) because the member's own birth record is missing or does not document adequately the member's name or parentage (28 members).

☐ The petitioner should submit documentation verifying parentage for the individuals listed in the attached report "FTB Ancestors and Members Missing Parental Verifications." Without this documentation, and additional verification of the identities or the petitioner's claimed historical Indian ancestors, the petitioner will not meet the requirements of criterion 83.11(e).

Criterion 83.11(f): Unique Membership

Criterion 83.11(f) prohibits the Department from acknowledging groups composed principally of members of federally recognized Indian tribes. A review of the documented petition's membership list and membership files showed that none of the FTB's current members claim membership in a federally recognized Indian tribe. The petitioner has submitted sufficient evidence to permit an evaluation of criterion 83.11(f).

Criterion 83.11(g): Congressional Termination

The FTB does not appear, from the materials submitted, to be part of a group that is the subject of congressional legislation expressly terminating or forbidding a Federal relationship. The petitioner has submitted sufficient evidence to permit an evaluation of criterion 83.11(g).

Summary

This letter describes deficiencies in the FTB documented petition the group needs to address for it to meet the Phase I criteria for Federal acknowledgment. The deficiencies are in criterion 83.11(e).

The OFA has not made a Phase I decision concerning the FTB documented petition. This TA review letter is neither a Phase I preliminary finding under criteria 83.11(d), (e), (f), and (g), nor a conclusion that the documented petition will result in a positive or negative preliminary finding

under Phase I. In addition, the FTB should not assume the AS-IA has made positive conclusions about parts of the documented petition not discussed in this letter. Finally, the FTB should not presume it would meet criterion 83.11(e) by simply submitting additional data and analyses. To make this letter most useful to the FTB, the OFA described deficiencies it detected while reviewing the documented petition during the Phase I TA review. These are only the deficiencies noted during this review. The FTB should not assume that simply providing the materials as indicated by the checkboxes will result in a positive or negative preliminary finding under Phase I. There may be other deficiencies revealed after the complete review under Phase I.

After reading this TA review letter, the FTB must submit a written response that withdraws the documented petition for further preparation; submits additional information and/or clarification; or asks OFA to proceed with the review (83.26(a)(1)(i)(A)-(C)). OFA encourages the petitioner to submit its supplement to the documented petition (response to this TA review letter) as soon as possible to capitalize on the availability of OFA staff (25 CFR 83 Preamble iii (F1)). If the FTB has any questions, please feel free to contact the Office of Federal Acknowledgment, Office of the Assistant Secretary-Indian Affairs, Department of the Interior, 1951 Constitution Street, N.W., MS-34B-SIB, Washington, D.C. 20240, or call (202) 513-7650.

Sincerely,

R. Lee Fleming

Director, Office of Federal Acknowledgment

Enclosures

OFA Historical Indian Tribe Bibliography
Attachments for Criterion 83.11(e):
- OFA Genealogical Documentation Workpaper for Marie Joseta Leyva
- OFA Genealogical Documentation Workpaper for Maria del Rosario Triunfo
- OFA Genealogical Documentation Workpaper for Maria Rita Alipas
- OFA Documents Chron Relationships Diagrams
- Copy of Documents Cited
- FTB Ancestors and Members Missing Parental Verifications

cc: Other Individuals or Entities that requested to be kept informed receive letter only; no enclosures