

Stand Up For California!

"Citizens making a difference"

standupca.org

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September 22, 2006

Honorable Lee Fleming- Director
Office of Federal Acknowledgment
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Mail Stop 34B-SIB
Washington, D.C. 20240
FAX: 202-219-3008

RE: Comment on the Juaneno Tribal Groups "Active Consideration"

Dear Mr. Fleming:

The history of the California Mission Indians is one of development or lack of development of state and federal policy in early California statehood. An attempt in the late 1800's to correct these policy problems created unique federal law in the acknowledgement of Mission Indian governments and the development of Mission Indian Reservations in California. As a result, serious questions arise regarding the acknowledgement of the Juaneno Band of Mission Indians which also reflects on other groups of Mission Indians currently petitioning for federal recognition.

The history of the development of the Mission Indian Reservations in California is well documented by Bureau of Indian Affairs surveys, United States Senate Reports, a congressionally appointed Commission and its required Report, United States and Military Census and the Indian Land Claims litigation. This extensive body of evidence does not support the political continuity of either 84A or 84B petitioning groups of the Juaneno necessary for federal acknowledgement. It is clear that gaps in the groups historical record of social and political organization is neither brought about by official or unofficial acts attributed to assimilation or termination. And lastly the petitioning factions of the group continue to be influenced by gaming investors, who are "**Tribe shopping**" for a metropolitan casino in California.

Discussion

The Development of the Mission Indian Reservations

The California Mission Indians often recite the boundaries of their reservation as being established by an Executive Order, however no reservation in California can be established by an Executive Order except as specifically authorized by statute due to the statutory limitations imposed on Presidential and/or Secretarial Orders pursuant to the 1864 Four Reservations Act. (Act of April 8, 1864, 13 Stat. 39) The 1864 Four Reservations Act established an undefined Mission Indians Reservation. This Mission Indians Reservation was further defined by

Congressional Action in 1891 in the Mission Indians Relief Act. (Act of January 12, 1891, 26 Stat. 712)

This 1891 Act appointed a Commission to establish the reservations for the Mission Indians. In many instances, the “Smiley Commission” acquiesced to the boundaries previously outlined in Executive Orders that were detailed in an 1888 Senate Report (50th Congress Report 74, January 23, 1888). This Senate report presents an extensive survey of the 42 groups of Mission Indians in preparation for the Mission Indians Relief Act. There is no mention of “Juaneno” or “Puyumkowitchum” or “Acjachemen Nation” or a place named “Axatcmeyan” occupied by Indians listed in this thorough survey.

This does not mean that there were not native people working or living near the Mission San Juan Capistrano with that name. However, Congress had no knowledge of such a group living as “*an independent community*” and did not include them in the Indians identified for the purposes of the Mission Indians Relief Act of 1891 that established reservations for Mission Indians in California.

Nevertheless, a historic account from Father Geronimo Boscana, San Francisco Friar in the 1820’s at Mission San Juan Capistrano provides the geographical origins of the Juaneno and the source of the groups’ names. The first Indians to settle in San Juan Capistrano came from a prior home land about 30 miles from the Mission location in a place known as “El Rancho de los Nietos”. Prior to that location the Indians migrated from a place called “Sejat” which was situated far to the northeast of the Mission community site. “Sejat”, is the original sight of the first mission located by Father Sierra.

Father Boscana also enlightens those of us seeking the origins of the aforementioned names. These names are derived from a popular myth of his time. An Indian maiden named Corrone dies and the citizens of Putuidem in mourning her loss spend the first night after her death in a location called “Acjachemen”. (This was about sixty yards from the Mission’s location) From this apparent funeral vigil, there emerged a large Indian dwelling, a neophyte’s community.

Congressional Appointed Commission and Report

The Smiley Commission Report, December 29, 1891 identifies specifically 32 Mission Indian Reservations and Indians living as independent communities at each locality. In addition, the report identifies “Indians on Private Grants”. These are individual Indians, laborers, servants or neophytes residing in and around the Missions. It appears that only the Mission lands are a common area shared by individual Indians and all others. Clearly the Mission as a place of residency for Indians whose entitlement to live there was a function not of a tribe, nor language, nor ethnicity, but of the dictates of Mission Priests. The Juaneno cite in their narrative “persons of prestige” and provide the example of the Mission Bell Ringers. This is not an aboriginal custom but a function of the Mission organization.

The Smiley Commission Report (52nd Congress Ex. Doc. No. 96, January 26, 1892) makes numerous references to the consolidation of Mission Indians living on grants or ranchos to

move to the Morongo, Agua Caliente or Captain Grande Reservations. The enactment of the Smiley Commission report recommendations into Congressional statute makes consolidation of Mission groups on the above mentioned reservations a matter of law.

In the 1800's the Southern California water supply was an important matter. Water was greatly economized by the adoption and construction of reservoirs and irrigating ditches. The Smiley Commission Report includes significant documentation of the employment of individual Indians as ditchers. The report contains letters by United States Indian Commissioners of Redlands, Palm Springs and San Diego as well as a resolution by the Board of Directors of the Southern Pacific Railroad Company of California. A number of water agencies are named within.

“The Indians are good ditchers and have great skill in the building of irrigating ditches.”

“...we have to say that they must have been at these villages temporarily engaged in digging ditches for the purposes of irrigation, employed by improvement companies”

It should be noted that the reason that the Agua Caliente, Morongo and Captain Grande Reservation were deliberately enlarged by the Smiley Commission was so that sufficient land would be available for not only the villages initially settled on those lands but also for other groups of Indians located on private land or grants from which their eventual eviction might be a possibility. The report so notes:

“In this contingency, this is the place for them **and we recommend that it be set apart, not only for those on the Reservation but for those hereafter to come.**”

United States Census

The Juaneno Petition of 1988 recites a population decline:

1812	San Juan Capistrano Mission	1361 Neophytes
1849	Military Report – Lt. E. O. C. Ofd	18-20 poor family resided in the valley
1860	Federal Census	226 Indians living within township
1873	Report Special Agent John Aims	40 Indians living within township
1879	Reconnaissance Lt. George Wheeler	6 or 8 villages <u>inland</u>
1880	Federal Census	41 Indians
1900	Federal Census	No reported Indian population
1910	Federal Census	15 Indians

The Department of the Interior has the legal right under the Indian Reorganization Act to extend federal recognition to groups of disparate Indians **residing in a common place.** However, the Juaneno were living scattered throughout Los Angeles, Orange, Riverside and Northern San Diego Counties. While the Tribal group has claimed in 1986-88 more than 800 enrolled members only 50% were attributed to living in Orange County. Orange County is a

huge County with a population of nearly 3 million, this argues against the concept of the "*distinct community*".

A news story by David McKibben, LA Times, October 10, 2005, *For Juaneno Indians, Unity Proves Elusive*, states that the Juaneno Band of Mission Indians is split into at least three factions. A Juaneno advocate could argue that the very existence of three factions indicates that the political issues dealt with by the community are important. However, the article goes on to say that these groups are not even speaking to each other.

Johnston said she, "also had reached out to Belardes and Rivera through intermediaries. No one has tape over their mouths," Johnston said. "I always hear what's going on in the other groups. We only have one history. But no, I haven't spoken with leaders of the other two groups."

The schism in tribal leadership appears to extend to membership enrollment. There is a substantial dispute regarding membership numbers. One faction claims 3000 in its group, another only a few hundred. This demonstrates a lack of evidence of a "*distinct community*" based on specific membership criteria. There is no sense of unity or organization exercising cultural, political and economic influence over membership. Excerpt from the article:

They even have tussled over how many members each group has. Rivera, who took over one faction in January, says about 1,000 Juaneno's recently switched allegiance from the other two groups and that his now has about 3,000 members. "I don't claim to be a hero or anything," Rivera said. "I'm just doing what the people elected me to do, and that's unifying our people. I think people are listening to our message." Johnston says her faction has about 1,500 members, though Belardes and Rivera say the number is much lower. Perry, meanwhile, said that about 280 Juaneno's were under Belardes' leadership and that only about 200 people actually belonged to Rivera's group." They say 3,000 are in their group," Perry said. "That's a huge concern of ours. We don't know who all these people are and where they came from."

Indian Land Claims Commission Litigation – 1968

The Indian Claims Commission was created to adjudicate the boundaries of historic Indian lands by the Act of August 13, 1946, 60 Stat.1049, and 25 U.S.C.70-70v3. The Commission filed its final report September 30, 1978, identifying all of the adjudicated historic lands of the historic tribes. Aboriginal lands of the Juaneno did not appear in this conclusive document. By the groups own words the Juaneno were included in Docket 80, *Baron Long v. the United States of America*. However, as a matter of Court Records, Docket 80 is listed as Bands of Mission Indians. While non-federally recognized tribal groups were allowed to participate in the Indian claims as successor to historical Tribal entities, participation in the Indian lands claims is not recognition of existing tribal governance by the federal government.

In preparation of the anticipated settlement of the aboriginal land claims in California in the United States Claims Court, the Bureau of Indian Affairs mounted an enrollment program of California Indians between 1928 and 1933. Each head of family filed a witnessed affidavit with

a BIA enrollment officer. The affidavit sought information on blood quantum, tribal affiliation, ancestry of parent and grandparents, and other information. Nevertheless, the Juaneno failed to participate in the first land claim suit, beginning in 1922 and settled in 1944.

- **This failure attests to the lack of the groups’ political organization.**

The tribal group did participate in the motion filed in 1974 joining with the La Jolla Band of Mission Indians. This phase of the litigation was about water rights although a new claim was introduced for different or larger reservations. The claim was for:

“Plaintiffs have presented a number of exhibits indicating a claim for larger or different reservations than those now existing. These exhibits concern reservation boundaries delineated by 1870 and 1891 Executive orders which are not the present reservation boundaries (e.g., SP 106, SP 111, SP 118).

All claims relating to different or larger reservations are encompassed within the claims which were settled in *Thompson v. United States*, (13 Ind. Cl. Comm. 369). Specifically, claim number two dealing with reservation lands (13 Ind. Cl. Comm. at 378) obviously encompasses any claim for larger or different reservation lands than now exist”.¹

Both the claims for water rights and different or larger reservations **were incompetent** because such claims were beyond the Commission’s jurisdiction. The Juaneno claim was removed.

“...Accordingly, settlement of claim number two in the Thompson case precludes recovery for any claim for larger or different reservations than now exist. *Pan American Match, Inc. vs. Sears Roebuck and Co.* Doctrine of *res judicata* is conclusive.”

Juaneno Band of Mission Indians #84B **Supplemental Narrative – November 29, 2005**

This narrative highlights genealogical heritage of modern day Juaneno’s to Indians who lived as labors, servants and neophytes at the Mission San Juan Capistrano. **The group must in order to present a case of historic nexus as a political body provide evidence of governance prior to 1848.** That indeed, a Juaneno tribal government existed prior to the development of the Mission system and is more than a splinter group or triblet of a larger historic Tribe. Initiating the petition “from” the date of 1848 does not meet the stringent federal requirement.

Governance is evidenced of widespread political influence or authority by means of a tribal council, leadership internal process or other mechanism which the group has used as a means of influencing or controlling the behavior of its members in significant respects without interruption. **It must be more than a few activists or extended families.**

Governance is also demonstrated by revolt, violence and anarchy. It is of no small consequence that Commissioners sent to California in 1851 concentrated on areas where organized Tribes revolted against the taxation of Indians. These organized groups represented

Tribal leadership exercising influence over their membership in an effort to protect the welfare of the Tribe. They did not wish to be taxed without a voice and representation in government.

A clear demonstration of major Indian armed resistance occurred in Temecula, “The Garra Tax War of 1851”. San Diego in need of tax revenue sent Sheriff Haraszthy among the Indians in 1850 and he collected \$600.00 in taxes on cattle and other property held by the Diegueno, Luiseno and Cupeno Indians. The Tribes organized and revolted. This prompted federal authorities to gather together Southern California Indians in Temecula to make a treaty.

Temecula was the site of negotiation for one of the unratified treaties. The interior Tribes, the Luiseno are of the same linguistic group as the Juaneno. Luiseno and Juaneno are related groups. Juaneno may be considered a triblet of the larger historic Tribe of Luiseno Indians. Indeed a number of Juaneno Indians live on the Pauma, Soboba, Rincon and La Jolla reservations. (Reference to the Morongo reservation has been made in the Juaneno newsletter).

Influence of IGRA on the Juaneno Petition

Since 1988 the enactment of the Indian Gaming Regulatory Act (IGRA) has been used in a manner which reaches far beyond a simple policy to regulate and permit gaming on Indian lands. Although on its face limited to gaming, IGRA has affected tribal acknowledgments, tribal restorations, reaffirmations and gaming related land acquisitions. The Juaneno petitions are not without the influence of gaming investors.

1982- Group 84A sent a letter of intent to petition for federal recognition. In California a number of Tribes were involved in charity bingo games. Several tribes were involved in class action litigation seeking restoration of tribal governance and lands. But more importantly gaming investors were in California laying the groundwork for future gaming opportunities. California's lottery was created in 1984 when 58 percent of the electorate approved Proposition 37—The California State Lottery Act (The Lottery Act). The passage of the Lottery Act opened the door to Tribal gaming casino opportunities in California. Similarly, slot machine manufactures are now attacking weak State Sweepstakes Laws in order to establish slot machine markets in other States.²

1996 - Group 84B sent a letter of intent to petition for federal recognition. In California a number of statutory bills were working their way through the California State Legislature intent on granting slot machines to tribal governments and expanding the opportunity of Bingo.

1997 - LA Times, *San Juan Council to Fight Juaneno Casino Proposal*, by Kimberly Bower and Michael Granberry, July 17, “We are very disappointed that certain members of our community who have presented themselves as the protectors of our community’s historic integrity have in reality been in a secret scheme with Law Vegas gambling interests to build a casino in San Juan Capistrano,” according to a statement by the City Council of San Juan Capistrano. The news story details the factions of the tribe once again in dispute over the legitimate leadership of the tribe. The pro-casino faction of the tribe signed an agreement with a gaming investor and received at least \$400,000.00 from a group of outside investors including a

Las Vegas based corporation known as **Brandcor**, which in 1997-98 were helping fund the recognition effort with the twin objective of opening a casino.

1998 - Tribal governments promoted Proposition 5. Legalizing slot machines on Indian lands and obligating the State to accept any Tribes compact within 30 days.

2002 - Stand Up For California received a letter from West Coast Detective Group, Inc. based in Northridge, CA. The investigators were looking for information as to who was financing the Juaneno band of Missions Indians in a second attempt to bring Vegas style gaming to San Juan Capistrano.

2005 - I was advised by a credible member of the California news corps and verified that the Viejas Tribal government is supporting one of the petitioning factions. The level of support or the type of support was not described to me. (This Tribe has a successful casino) I have been advised that the other faction has hired tribal gaming Attorney John Peebles. It appears that the factions are involved with gaming interests for the promotion of a metropolitan urban casino in Orange County. Attorney General Lockyer has recused himself from making public comment on issues related to the Juaneno.

"I am writing to inform you that I have, since my marriage to my wife Nadia, recused myself from official participation in any matter relating to the affairs of the Juaneno Band, including any of the various petitions from tribal members requesting federal recognition for the Band. I continue to do so". *In a letter dated June 13, 2006, Attorney General Lockyer to Cheryl Schmit.* Mrs. Lockyer is a member of one faction of the Juaneno Band.

Stand Up For California is a statewide organization very concerned about the impacts of gaming on the public and the influence of gaming investors on the federal regulatory process.

- **"Tribe shopping" is a developing West Coast trend in which gaming investors are using federal recognition as a vehicle to promote urban casinos.**
- **As an informed party I respectfully request the Assistant Secretary to hold a public hearing regarding the proposed findings of the Juaneno federal recognition.**
- **I respectfully request that contact is directly made to the State of California and affected local governments instead of simply being copied on a letter that is illegible. (See quality of letter sent to the Governor, copy attached)**

In Conclusion:

There is serious significance in gaining federal recognition which makes adherence to the federal acknowledgment process a vital necessity. Federal recognition establishes a perpetual government to government relationship between a tribe and the United States and has

considerable social political and economic implications for the petitioning group, its neighbors, federal, state and local governments. This process must be open and fair to all affected parties.

It is the view of Stand Up For California that the current petition of the Juaneno Band of Mission Indians fails to meet the necessary regulatory criteria for federal recognition. Further the group has not demonstrated a historic presence independent of other California Tribes.

Nevertheless, we believe that there is a collective identity of this group in San Juan Capistrano and the regional area. That there exist a rich inter-racial identity of family and extended family associated with active membership in the Catholic Church. The social and cultural contributions in the development of the State of California by these groups must be respected and appreciated. The participation of their families over time has helped to build California and reminds us of our diverse and dynamic heritage.

Thank you for this opportunity to comment on the active consideration of the Juaneno Band of Mission Indians petition for federal recognition.

Sincerely,

Cheryl A. Schmit – Director
Stand Up For California - 916-663-3207
schmit@hughes.net

CC: Honorable Andrea Lynn Hoch, Secretary Legal Affairs
Honorable Stephanie Shimazu, Deputy Legal Affairs Secretary
Honorable Robert Mukai Senior Asst. AG Indian Law and Gaming Unit
Honorable Sara Drake, Supervising Deputy AG Indian Law and Gaming Unit
Attorney Dan Hess – Deputy District Attorney
Orange County Board of Supervisors

Attachment: A copy of letter sent to Governor Schwarzenegger – not legible.

¹ Docket NO. 80-A California Mission Indians, filed June 26, 1974, *Baron Long vs. The United States of America*

² Already the gaming manufacturer Multi Media is preparing to promote a new game attacking state statutes related to Sweepstakes. The State of Alabama chosen for its weak vague lottery laws finds itself in litigation with Multi Media Inc. The manufacturer is selling internet time on computers with a plastic card. The card is ostensibly used as a key to start the computer for a period of time. But instead the computers are being used as a ‘reader’ to see if the purchaser of the internet time has won the Sweepstakes. The computers are not being used to ‘expand computer literacy’ as the CEO of Multi Media alludes, but rather to enhance the pari-mutuel racing experience at the Birmingham Race Course.

This new game makes clear how subjective and vague the exceptions amendment criteria are. The plastic cards are sold at the rate of \$1.00 for four minutes of internet time that provide one hundred entries or chances in the Sweepstake. Winning and losing is already predetermined. Is this an internet service or a gambling scheme? Is this an illegal Class III lottery as determined by the State of Alabama or a Class II game as described in the draft

amendment criteria? *The Jefferson County Racing Association v. Mike Hale and Innovative Sweepstakes Systems, Inc.* CV200507684