

Prepared Statement of the Honorable Anthony Rivera, Jr., Chairman
Juaneño Band of Mission Indians, Acjachemen Nation
Oversight Hearing before the Senate Committee of Indian Affairs
On Recommendations for Improving the Federal Acknowledgment Process

April 24, 2008

Good morning Chairman Dorgan, Vice Chairman Murkowski, and distinguished members of the Committee. My name is Anthony Rivera, Jr. and I am the Chairman of the Juaneño Band of Mission Indians, Acjachemen Nation.

It is my honor to appear before you today to discuss the Tribe's experience with the administrative process in the Interior Department's Office of Federal Acknowledgment (OFA).

At the outset I want to say that we have experienced real delays with the OFA that have prejudiced the Tribe and its members in a number of ways.

We have lost many elders in the nearly three decades we have been in this process. We are not a wealthy people and we have had to scrape together enough money to locate documents, hire professionals, and do the necessary travel that this process requires.

Our first contact with Europeans came in the 18th century when the Spanish occupied what they called "New Spain" in Alta California. Spanish missionaries

went on to establish a series of mission churches along the west coast from San Diego to Monterrey. The historical lands of the Tribe are in and around what was and is the Mission San Juan Capistrano, located just south of Los Angeles and north of San Diego.

My Tribe's efforts to be recognized by the U.S. Government began many decades before there was an OFA. Indeed, throughout much of the 19th and 20th centuries my Tribe has worked hard to regain this status.

However, since acknowledgment regulations were promulgated in 1978, my Tribe has pursued federal recognition through this administrative process. I would like to walk you through our progress since it illustrates areas that are in dire need of reform.

1. In August 1982, our Tribe submitted its Letter of Intent for acknowledgment. We were designated Petitioner #84.
2. The Tribe then worked hard to prepare and submit a fully documented petition that satisfied the evidentiary requirements of the regulations. We met with BIA staff and addressed the shortcomings it had identified in our petition.
3. In 1993, after reviewing the thousands of pages of genealogical, anthropological, and historical evidence that we had submitted, the Branch of Acknowledgment and Research (BAR) --- the predecessor to the OFA ---

determined that our evidence was sufficient and accordingly placed our petition on the “ready, waiting for active consideration” list. Up to this point, our progress in the acknowledgment process was not problematic.

4. However, in May 1995, the BAR unjustifiably and without opportunity for appeal, removed our petition from the “ready, waiting for active consideration” list.
5. In February 1996, we were returned to the “ready, waiting for active consideration” list but a month later our petition was re-assigned #84A and another group which submitted a new letter of intent was assigned petitioner #84B.
6. It would take my Tribe, the original petitioner 84, almost 10 years to regain our position at the head of the “ready, waiting for active consideration” list.
7. My Tribe’s petition finally went on “active consideration” in September 2005. The Department treated the other group, #84B, in essence, as a co-petitioner and placed it on the “active consideration” list in September 2005 along with my Tribe.
8. More than two years later, in November 2007, the OFA issued a Proposed Finding on our petition. We are currently preparing an evidentiary response to those areas in our petition which OFA considers deficient.

Since the late 1980s, this Committee has reviewed a series of reforms to the acknowledgment process. Today I will focus on procedural difficulties the Tribe has experienced and want to state up front that I am limiting my comments to procedural deficiencies in the process, i.e. how petitioners and evidence are handled. I do not believe this hearing to be the appropriate forum for discussing the factual foundation of my Tribe's history and continuity.

Being Removed from "Ready" Status. OFA made a fundamental mistake by removing our petition from "ready" status and we are still feeling the impact of this decision 13 years later. The OFA received an application from a disgruntled member of the Tribe who disagreed with the results of the most recent tribal election. Rather than deferring to the Nation's political process, the OFA chose to give legitimacy to the other group. Rather than spend time reviewing this application, which would have demonstrated its illegitimacy, the OFA insinuated it into the process and processed it in tandem with my Tribe's petition. This has caused us severe problems that continue to this day. So while OFA routinely states that it defers to the internal political workings of petitioning groups, in fact it does get involved and often to the detriment of the group involved.

Serial Extensions by OFA to Issue Proposed Finding (PF). The regulation at 25 CFR 83 provides that one year after going on active status, the OFA is required to issue a Proposed Finding. The regulation authorizes an

additional 180-day period of time which may be granted by the Assistant Secretary – Indian Affairs. In our case the OFA / AS-IA / Department granted to itself no fewer than 7 extensions before issuing a Proposed Finding.

Most significantly, these procedural difficulties caused my Tribe to lose more than 10 years, and we have had to spend considerable resources updating our petition, including additional documentation and evidence. The fact that the Department accorded a newly-created group co-petitioner status has meant that every step of the active consideration stage has taken longer because the Department is dealing with two petitioners, not one. We maintain that a factual finding on my Tribe's governing procedures in 1995 could have quickly resolved the identity of the legitimate petitioner and saved the Department and all parties considerable time, effort, and expense.

For this Committee it is indeed tempting to want to comprehensively reform a process it believes to be badly broken. I urge you to continue to focus on reform and to tackle those elements of the process that can be reformed and bring relief to other petitioners that find themselves in the same position we have been since 1982. I respectfully offer the following recommendations to improve the process.

- Starting with this Committee's recommendation, the Congress should provide the OFA with sufficient resources and funding to accomplish their

mission, including informal technical assistance sessions with petitioners before any filing is made to guide them on the process.

- Likewise, the Committee should require OFA to provide periodic progress reports on Active Status petitions and should hold OFA and the Assistant Secretary accountable for developing proper policy for Tribes to be treated fairly.
- OFA should not be authorized to remove petitioners from the queue without procedural safeguards, including notice to the petitioner, an opportunity to comment on the proposed action, and some appeals process so that the removal decision can be reviewed by a higher authority.
- OFA should formalize and promulgate a policy of non-interference in the internal political and electoral workings of petitioning groups. OFA's decision in 1995 that resulted in the insinuation of another group has caused years of delay, additional costs to the Nation and the U.S. government, and enormous administrative problems for us as the petitioner.
- OFA should have the decision-making flexibility to secure reasonable extensions of time within which to issue Proposed Findings. But that flexibility should not be open-ended and should not allow for the kind of delays we experienced in waiting for our Proposed Finding.

I intend to submit for the record additional thoughts and recommendations based on our experience and thank you again for the opportunity to appear before you this morning. I would be happy to answer any questions you might have at this point.