

Marino
Item # 2a QS

James E. Marino
Attorney at Law
1026 Camino del Rio
Santa Barbara, CA 93110
Tel./FAX (805) 967-5141
jmarinolaw@hotmail.com

5 May 2009

Amador County
Board of Supervisors

Re: Appeal under 25 C.F.R. 2.2, 2.8 & 2.9

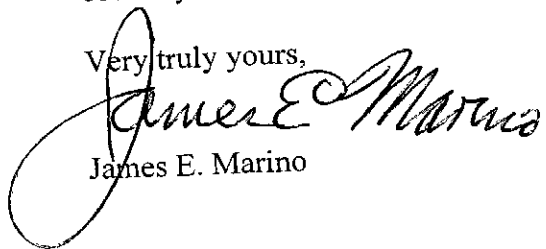
Dear Clerk of the Board;

Please find enclosed materials concerning the Administrative Appeal to the Secretary of Interior brought by some citizens of Amador County.

This is an effort to resolve this matter administratively and if possible avoid further litigation under the Administrative Procedures Act 5 U.S.C. 701. et seq.

These materials which are self-explanatory, are furnished for your information and as a courtesy because of your continuing interest in these matters.

Very truly yours,


James E. Marino

BD OF SUPERVISORS
2009 MAY 15 AM 11 48
OFFICIAL RECORDS
AMADOR COUNTY, CA

COPY

NOTICE OF APPEAL

To Ken Salazar the Secretary of the Interior, Department of the Interior of the United States of America, **PLEASE TAKE NOTICE THAT:**

The undersigned Appellants Norman Borth, Duane Martin, Sr. and Edwin R. Gonzalez hereby take the enclosed appeal from the failure of the Secretary of Interior or his agents, officers and employees to make any "Indian Lands" determination that the 67.5 acres of fee simple land in Amador County, California commonly called "Buena Vista" is eligible for the construction and operation of either a class II or class III gaming operation and casino, as required by 25 United States Code section 2703 or is entitled to do so by any exception provided for by the provisions of 25 United States Code section 2719.

As indicated by a copy of the attached website of the "Buena Vista Rancheria of MeWuk Indians" their intent to construct such a class III casino is eminent.

This appeal is made pursuant to 25 U.S. Code of Federal Regulations parts 2, sections 2.2, 2.3, 2.8, 2.9 and 2.10 and is based upon the following enclosed documents besides this notice:

1. The appeal and Statement of Reasons for failure to make Indian Land eligibility for gaming determination as required by 25 U.S.C. section 2703 or 2719.
2. The enclosed history of the 67.5 acre parcel of fee simple lands located in Amador County at a site called Buena Vista once used as a Rancheria.
3. A concise history of a tiny community of Miwok Indians who were recently recognized as existing in 1934, but not acknowledged by the U.S. Bureau of Indian Affairs until 2000 at which time they were officially and erroneously acknowledged under the name and style as the "Buena Vista Rancheria of MeWuk Indians."
4. The supplemental memorandum of law of the reasons why the fee lands at Buena Vista are **NOT** eligible "Indian Lands" upon which any lawfully acknowledged Indian tribe could conduct either class II or class III gaming under the I.G.R.A. 25 U.S.C. 2710d.
5. Appellants Proof of service.

Secretary of the Interior
United States Department of Interior
1849 C Street N.W.
Washington, D.C. 20240

APPEAL BY CITIZENS OF AMADOR COUNTY OF THE FAILURE OF THE SECRETARY OF INTERIOR TO MAKE THE "INDIAN LANDS" ELIGIBILITY FOR GAMING DETERMINATION REQUIRED BY 27 U.S.C. 2703 or 25 U.S.C. 2719.

The undersigned interested persons are citizens and residents of Amador County, California. They are now and will be adversely and negatively impacted in the future by the construction of and the operation of a gambling casino and other business on the vacant rural fee land commonly called Buena Vista.

The proposed casino has erroneously received approvals from the National Indian Gaming Commission and has been allowed by the federal government and the state of California, to execute a tribal-state compact to conduct class III gambling operations pursuant to 25 U.S.C. 2710(d)(3) on the Buena Vista fee lands.

All of these approvals granted by the National Indian Gaming Commission and allowed by the Department of Interior and Bureau of Indian Affairs, were granted without ever determining if the 67.5 acres of Buena Vista fee lands were eligible "Indian Lands" as defined and as required by either 25 U.S.C. 2703 or in particular 25 U.S.C. 2719 for lands that are acquired after 1988.

The undersigned are interested persons as defined in 25 Code of Federal Regulations sections 2.2, 2.3 and 2.8 and are appealing the failure of the Secretary of Interior to make this required "Indian Lands" determination.

As a result of these federal agency approvals of a tribal gaming ordinance and tribal-state compact, *the likelihood of the actual construction and operation of a class III Indian gambling casino on the ineligible Buena Vista land* which does not comply with 25 U.S.C. 2703, or 2719 and does not have a lawful tribal-state compact as required by 25 U.S.C. 2710(d)(3) of the Indian Gaming and Regulatory Act, *is eminent*.

STATEMENT OF THE REASONS FOR THIS APPEAL

The undersigned hereby appeal the Department of Interior's failure to determine the status of the Buena Vista fee lands on which the Class III Indian casino was improperly approved there. This land is in fact *ineligible "Indian Lands"*. It is made ineligible by the Indian Gaming and Regulatory Act Title 25 section 2703 and 25 U.S.C. 2719 for the reasons set out in the accompanying History of the Buena Vista Lands and memorandum of law.

As set out in that History the Buena Vista fee lands this 67.5 acre parcel of land was originally owned in fee by the Louis Albert and Marjory Alpert [EXHIBIT "A" to the Accompanying History] the United States purchased the land in fee for use as a Rancheria to be used and occupied by any homeless Indian who asked for an assignment to occupy and live on the land and to farm or ranch it until such time as they chose to leave and relinquish their occupation and assignment for the land or the United States terminated their assignment on that land. [SOLICITORS OPINION, EXHIBIT "B" to the accompanying history.]

Louie and Annie Oliver and John Oliver were occupying the Buena Vista lands from 1935 to 1959. [EXHIBITS F, F-1, F-2 and F-3].

The informal assignment to the Olivers was acknowledged by the Department of Interior. See EXHIBIT "G" to the History of Buena Vista Lands.

When it became apparent that Congress intended to terminate the California Rancheria there was correspondence from the Olivers to the Department of Interior in which the Olivers indicated they wanted a fee patent to the Buena Vista Land they then occupied and were residing on and for which they had made improvements at their own expense. [EXHIBITS "F" through "F-3" to the accompanying History of the Buena Vista Lands.]

The Olivers were made aware that the Department of Interior planned to convey the Buena Vista lands to them in fee. [EXHIBIT "F" through "F-3" to the accompanying History of the Buena Vista Lands.]

On 6 October 1959 the United States conveyed the entire 67.5 acre parcel of land at Buena Vista to Louie Oliver and Annie Oliver in fee simple as husband and wife¹ and as joint tenants [See attached EXHIBIT "H"] to the accompanying Buena Vista property history. After that conveyance the Olivers were sent a deed in fee from the United States naming them as grantees and a cover letter explaining the land was now theirs to do with as they saw fit. [EXHIBIT "I"] This was given in compliance with the California Rancheria Termination Act.

In 1960 the Olivers made a loan and gave a chattel mortgage to secure the loan including a lien on the Buena Vista property. [EXHIBIT "J" to the History of Buena Vista Lands.] On or about the 10th of July 1979 a complaint was filed in the United States District Court by the California Indian Legal Services challenging the legality of the termination provisions of the California Rancheria Act, in particular the status of Indian by residents of 17 different Rancherias and the termination of any tribal status that may have existed for any group, band, tribe or community living on or occupying any of the named Rancherias. In addition that complaint [EXHIBITS "M" and "N" to the History of the Buena Vista Rancheria] alleged that the individual Indian persons who received fee title to former Rancheria land could void the deeds at their election and prayed that the deeds be declared voidable and the grantees be given the opportunity to convey the lands they

¹ Under California Community Property law this language in a deed to husband and wife denotes and intent to create community property.

received in fee back to the United States in trust. The complaint also alleged the United States reneged on agreements and obligations to make a number of physical improvements to various Rancheria lands not including the Buena Vista Rancheria.

Although the Olivers were not named as Plaintiffs in that case the Buena Vista Rancheria was certified as members of a class of Plaintiffs including the Olivers, that resided upon and occupied one of the named Rancheria lands set out in the complaint and the Olivers had received a fee deed to all that land from the United States in 1959.

The Olivers were the only individual Indians residing on and occupying that land as of 1959 and were the only individual Indians who received a fee deed to all 67.5 acres of the Buena Vista Rancheria Lands.

That case, entitled Tillie-Hardwick et.al. vs. United States of America and Interior Secretary Andros, et.al. was resolved by a stipulation and judgment [See EXHIBITS “O” and “P” to the accompanying History of Buena Vista Lands.]

By the relevant terms of that stipulation as it affects the Buena Vista Rancheria lands the Olivers² had a two (2) year period during which they could deed the entire 67.5 acre Buena Vista Rancheria land they owned in fee back to the United States “in trust”³ if they desired. In addition to the judgment itself, the Department of Interior also notified all Individual Plaintiff class members who had received fee deeds to Rancheria Lands of the steps to take if they wanted to exercise their right to deed and convey their fee owned lands back into trust. [See attached EXHIBIT “Q” to the History of Buena Vista Lands submitted herewith.]

The successors in interest and then sole owner in fee, were descendants of Louie Oliver, and were his daughter Lucille Lucero⁴ and the estate of Enos Oliver his son who had died in the interim. These successors did not convey the land back to the United States in trust in the two year time period provided by the stipulated judgment.

On or about the 27th day of May, 1986 Lucille Lucero conveyed by a Grant Deed all of her right, title and interest in the Buena Vista fee lands to one Donna-Marie Potts for unstated “valuable consideration.” [See attached EXHIBIT “S” to the History of Buena Vista Lands submitted herewith.] On or about the 19th day of March 1995 Lucille Lucero died and her Will was offered for probate. By the terms of that Will Lucille Lucero devised all of her right, title and interest in the Buena Vista fee lands to one DonnaMarie Potts [nee Grove].⁵ [See attached EXHIBITS “S”, “T” and “U” to the accompanying History of Buena Vista Lands above] The balance of the interest in the Buena Vista is .

² Louie Oliver and Annie Oliver, husband and wife.

³ This reconveyance option was personal to the Olivers and was made final by entry of judgment in that case.

⁴ at the time the stipulated judgment [1983] was entered Louie, Annie had died leaving one daughter Lucille Lucero and a son Enos Oliver who had died in 1978.

⁵ Less what she had already deeded in 1986 to Potts.

lands was that of Enos Oliver, her brother which was in and had been held in the estate of Enos Oliver, who had died in 1978, for some 18 years.

DEMAND FOR SECRETARIAL DETERMINATION OF INDIAN LANDS
ELIGIBILITY

For all of the reasons set out herein, the Memorandum of Law submitted herewith and as evidenced by the History of the Buena Vista Lands, as well as the History of the Descendants of the Original occupants and assignees of the Buena Vista Rancheria Lands and all the EXHIBITS THERETO these concerned citizens hereby demand the Secretary of Interior make the required Indian Lands eligibility determination that is required by the Indian Gaming and Regulatory Act 25 U.S.C. 2703 or 2719 prior to approving any site specific tribal gaming ordinance or any Tribal-State class III gaming compact for the Buena Vista fee land sought under 25 U.S.C. 2710(d)(3).

These concerned citizens demand that the determination be made within ten (10) days under 25 Code of Federal Regulations sections 2.2, 2.3, 2.8 and 2.9 and further that all improper and unlawful approvals of the tribal gaming ordinance and tribal-state compact be withdrawn forthwith.

March 27, 2009
March 2009

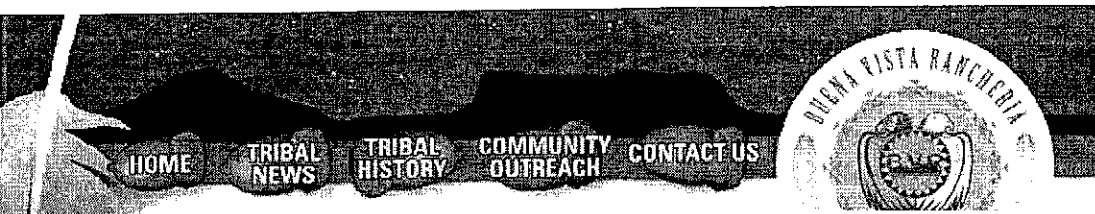
Norman Borth
Norman Borth

March 27, 2009
March 2009

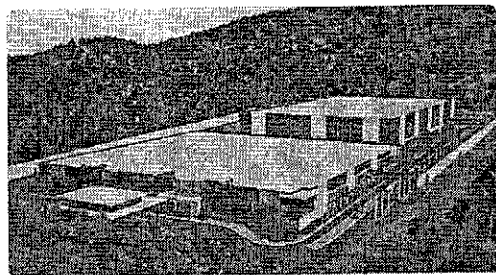
Duane Martin Sr.
Duane Martin, Sr.

March 27, 2009
March 2009

Edwin R. Gonzalez
Edwin R. Gonzalez



TRIBAL GAMING

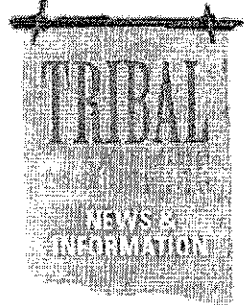
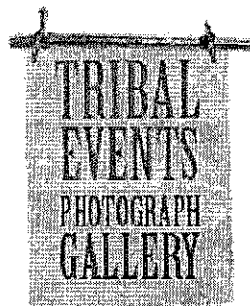


VENDORS | CAREERS | FAQs

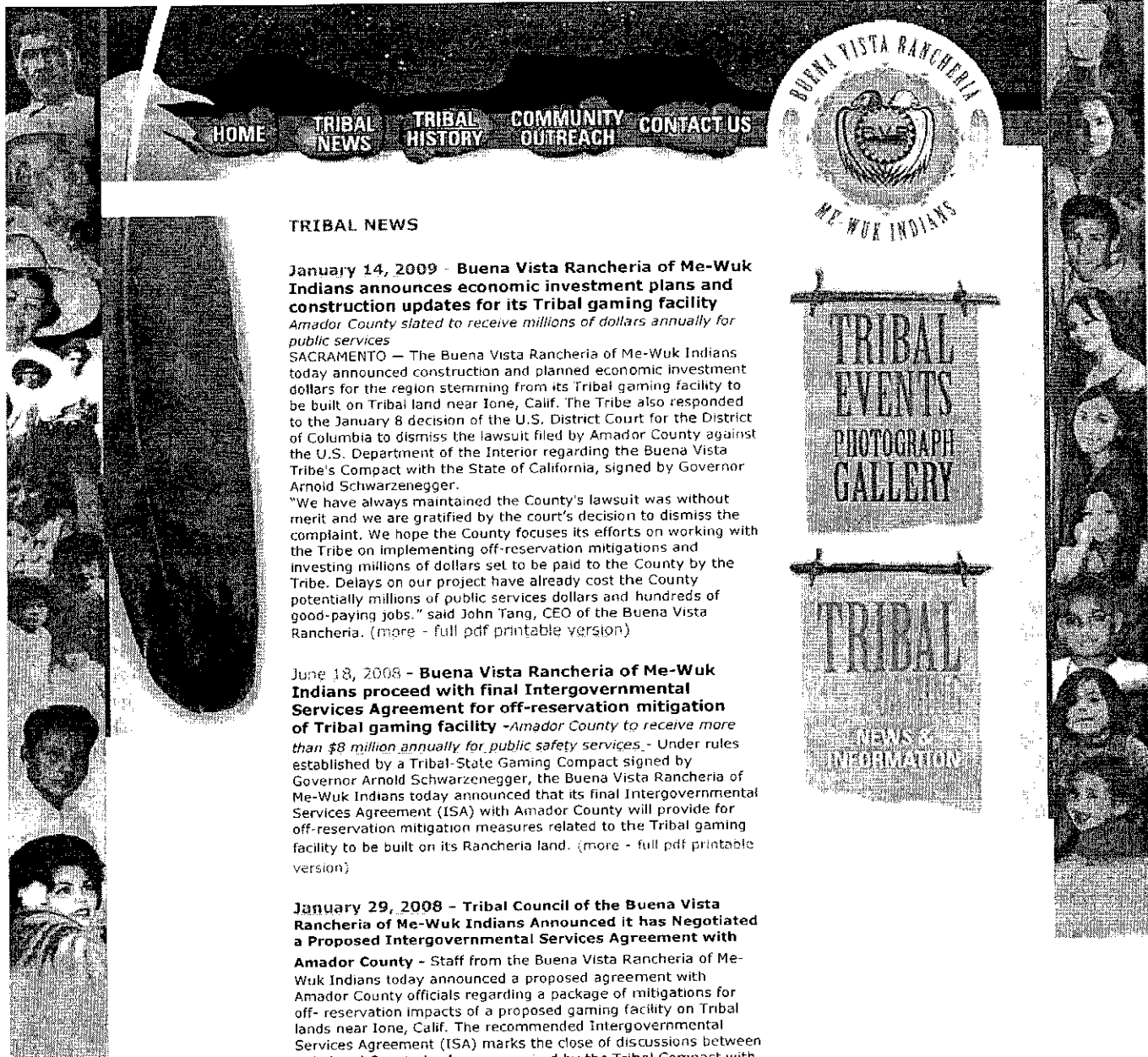
The **Buena Vista Casino** is coming to Amador County. The Casino's architecture will be in harmony with tradition, nature and our surroundings. During construction, an estimated \$150 million in labor, building material and supplies - much of it from local labor, vendors and contractors - will deliver significant economic benefits to the local community of Amador County. Get all the latest news updates from our Tribal News.

The casino is expected to create one thousand new jobs once opened. The Tribe hopes to open the facility in early 2010 and will offer exciting slots, progressive jackpots, table games and a selection of restaurants; complete with a covered parking facility for your convenience and a child care facility for employees.

The Buena Vista Rancheria is located on 67.5 acres of Tribal land near Jones, Calif., within the boundaries of the Tribe's original reservation. The Me-Wuk Indians have lived on the Tribe's land since at least 1817.



© 2008 Buena Vista Me-Wuk Indian Tribe.
All Rights Reserved.



TRIBAL NEWS

January 14, 2009 - Buena Vista Rancheria of Me-Wuk Indians announces economic investment plans and construction updates for its Tribal gaming facility
Amador County slated to receive millions of dollars annually for public services

SACRAMENTO — The Buena Vista Rancheria of Me-Wuk Indians today announced construction and planned economic investment dollars for the region stemming from its Tribal gaming facility to be built on Tribal land near Lone, Calif. The Tribe also responded to the January 8 decision of the U.S. District Court for the District of Columbia to dismiss the lawsuit filed by Amador County against the U.S. Department of the Interior regarding the Buena Vista Tribe's Compact with the State of California, signed by Governor Arnold Schwarzenegger.

"We have always maintained the County's lawsuit was without merit and we are gratified by the court's decision to dismiss the complaint. We hope the County focuses its efforts on working with the Tribe on implementing off-reservation mitigations and investing millions of dollars set to be paid to the County by the Tribe. Delays on our project have already cost the County potentially millions of public services dollars and hundreds of good-paying jobs," said John Tang, CEO of the Buena Vista Rancheria. (more - full pdf printable version)

June 18, 2008 - Buena Vista Rancheria of Me-Wuk Indians proceed with final Intergovernmental Services Agreement for off-reservation mitigation of Tribal gaming facility
-Amador County to receive more than \$8 million annually for public safety services - Under rules established by a Tribal-State Gaming Compact signed by Governor Arnold Schwarzenegger, the Buena Vista Rancheria of Me-Wuk Indians today announced that its final Intergovernmental Services Agreement (ISA) with Amador County will provide for off-reservation mitigation measures related to the Tribal gaming facility to be built on its Rancheria land. (more - full pdf printable version)

January 29, 2008 - Tribal Council of the Buena Vista Rancheria of Me-Wuk Indians Announced it has Negotiated a Proposed Intergovernmental Services Agreement with Amador County
 - Staff from the Buena Vista Rancheria of Me-Wuk Indians today announced a proposed agreement with Amador County officials regarding a package of mitigations for off-reservation impacts of a proposed gaming facility on Tribal lands near Lone, Calif. The recommended Intergovernmental Services Agreement (ISA) marks the close of discussions between Tribal and County leaders as required by the Tribal Compact with the State of California prior to the Tribe opening a Gaming and Entertainment Facility on the Buena Vista Rancheria. (more - full pdf printable version)

September 21, 2007 -The Buena Vista Childcare Center is a licensed childcare center providing non-medical care to children up to 5 years, 9 months of age. The Center will provide personal services, supervision, and assistance essential for sustaining the activities of daily living for children. The Center will be unique in that it will specialize in activities that support child brain development, social skill development, and long term academic success. The centers hours are **M-F, 7:30am – 5:30pm**. These services will be provided to **preschoolers** in a group setting. Age appropriate lessons or experience with indigenous languages, music, dance, drama, handwork, painting, modeling, puppetry, field trips and gardening are an integrated part of the basic services offered.

February 21, 2007 - The Buena Vista Band of Me-Wuk Indians continues to seek comments from the public regarding its proposed casino project south of Lone. MORE>

January 26, 2007 - The Buena Vista Rancheria of Me-Wuk Indians today released its Draft Tribal Environmental Impact

APPELLANTS PROOF OF SERVICE ON ALL INTERESTED PARTIES

I am, and was at the time of the service hereinafter mentioned, over 18 years of age and not a party to the above-entitled action. My business address is 1026 Camino del Rio, Santa Barbara, California 93110. I am employed in the County of Santa Barbara.

On 6 May 2009, I served the within NOTICE OF APPEAL AND APPEAL, HISTORY OF THE BUENA VISTA FEE LANDS, SUPPLEMENTAL MEMORANDUM OF LAW, CONCISE HISTORY OF THE INDIAN COMMUNITY ERRONEOUSLY ACKNOWLEDGED AS THE "BUENA VISTA RANCHERIA OF MEWUK INDIANS" on the following as follow:

Secretary of Interior Ken Salazar
United States Department of Interior
1849 C Street N.W.
Washington, D.C. 20240

by: Registered Mail

Acting Solicitor Arthur Gary
U.S. Department of Interior
1849 C Street N.W., Room 6415
Washington, D.C. 20240

by: Registered Mail

Commissioner Phillip Hogen
National Indian Gaming Commission
1441 L Street N.W., Suite 9100
Washington, D.C. 20005

by: Regular Mail

Governor Arnold Schwarzenegger
c/o Andrea Hoch
State Capitol Building
Sacramento, CA 95814

by: Regular Mail

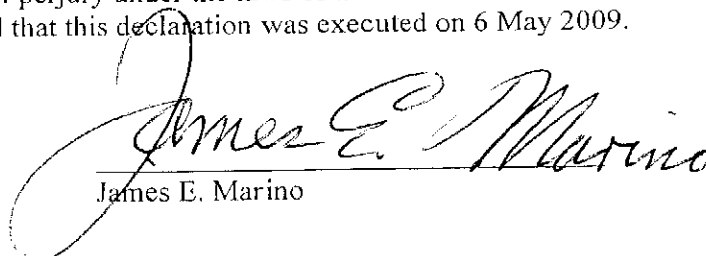
The Amador County
Board of Supervisors
810 Court Street
Jackson, CA 95642

by: Regular Mail

"The Buena Vista Rancheria
of Mewuk Indians"
P. O. Box 16283
Sacramento, CA 95816

by: Regular Mail

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on 6 May 2009.


James E. Marino

SERVICE LIST

Secretary of Interior Ken Salazar
United States Department of Interior
1849 C Street N.W.
Washington, D.C. 20240

Acting Solicitor Arthur Gary
U.S. Department of Interior
1849 C Street N.W., Room 6415
Washington, D.C. 20240

Commissioner Phillip Hogen]
National Indian Gaming Commission
1441 L Street N.W., Suite 9100
Washington, D.C. 20005

Governor Arnold Schwarzenegger
c/o Andre Hoch

The Amador County
Board of Supervisors
810 Court Street
Jackson, CA 95642

"The Buena Vista Rancheria
of Mewuk Indians"
P. O. Box 16283
Sacramento, CA 95816