

ATTACHMENT  
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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

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**CALIFORNIA VALLEY MIWOK TRIBE,  
formerly, SHEEP RANCH OF THE MI-WUK  
INDIANS OF CALIFORNIA,**

**Plaintiff,**

**Judge James Robertson  
No. 1:05CV00739**

**v.**

**UNITED STATES OF AMERICA, et al.,**

**Defendants.**

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**DECLARATION OF SCOTT KEEP**

I, **SCOTT KEEP**, declare:

1. I am the Assistant Solicitor, Branch of Tribal Government and Alaska, Division of Indian Affairs, in the Office of the Solicitor, United States Department of the Interior (Department). I have held this position first on an acting basis and then on a permanent basis since November 1976.
2. As the Assistant Solicitor for the Branch of Tribal Government and Alaska, I am responsible for providing the Secretary of the Interior, the Office of the Assistant Secretary - Indian Affairs, and Bureau of Indian Affairs (BIA), legal counsel on matters relating to tribal governments, their organization and functioning under the supervision of the Solicitor, the Deputy Solicitor, and the Associate Solicitor - Indian Affairs.
3. On August 26, 2005, I received a telephone message from Marc A. Le Forestier, Deputy Attorney General, State of California.

4. I have spoken with Mr. Le Forestier on a number of occasions over the years.
5. When I returned his call, Mr. Le Forestier indicated that he was representing the California Gambling Control Commission and was trying to clarify the Department of the Interior's position with regard to the July 19, 2005, letter from Janice Whipple-DePina, the Awarding Official for the Bureau of Indian Affairs, Central California Agency, to Ms. Silvia Burley concerning the suspension of the Bureau's Aid To Tribal Government contract with the California Valley Miwok Tribe.
6. I do not recall much about my conversation with Mr. Le Forestier but I believe he indicated he had received a copy of the August 19, 2005, letter from Ms. Whipple-DePina reinstating the contract.
7. I believe I also indicated to Mr. Le Forestier that senior Bureau officials had met with Ms. Burley and her counsel on the afternoon of August 19, 2005.
8. I believe we talked, briefly, and generally, about the use of an escrow when it was unclear who represented a tribe.
9. I believe I indicated that I had some recollection of instances in which the Bureau of Indian Affairs had not distributed Federal funds or had placed them in some sort of escrow when it was not clear who represented a tribe.
10. I did not presume to tell Mr. Forestier that the Commission should withhold from the Tribe the current quarterly distribution of gaming monies, which I recognized was a decision that only the Commission could make.
11. I believe I indicated to Mr. Forestier that I had previously been in contact with officials from the Gambling Control Commission about the dispute within the tribe. What I was

referring to was my letter of May 20, 2004, to Mr. Gary Qualset, Deputy Director for Licensing and Compliance, a copy of which is attached as Exhibit 1. Also attached as Exhibit 2, is my copy of Mr. Qualset's letter of May 28, 2004, to Thomas Wolfrum, attorney representing Yakima Dixie, indicating that the Commission would seek further clarification of Mr. Dixie's appeal but that it would not withhold payment of the gaming funds in the meantime.

12. My understanding was that the Commission released the gaming funds in 2004 to the tribe.

Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 22nd day of September, 2005.



SCOTT KEEP



# United States Department of the Interior

OFFICE OF THE SOLICITOR

1849 C STREET N.W.  
WASHINGTON, DC 20240

In reply, please address to:  
Main Interior, Room 6456

Mr. Gary Qualset  
Deputy Director for Licensing & Compliance  
California Gambling Control Commission  
2399 Gateway Oaks Drive, Suite 200  
Sacramento, CA

May 20, 2004

Re: California Valley Miwok Tribe

Dear Mr. Gary Qualset:

The purpose of this letter is to confirm to you that the Department of the Interior does have pending before it an appeal from Yakima Dixie contesting the Department's recognition of Silvia Burley as the spokesperson of the California Valley Miwok Tribe. In addition, the Department is a defendant in litigation in the United States District Court for the Eastern District of California brought by the California Valley Miwok Tribe under the apparent direction of Ms. Burley. In that litigation, Brian Golding, the Tribal Operations Specialist for both the Central California Agency of the Bureau of Indian Affairs (BIA) and for the Pacific Region of the BIA recently described Ms. Burley's status as follows:

9. At the present time, the Bureau of Indian Affairs acknowledges Silvia Burley as the authorized representative of the California Valley Miwok Tribe with whom government-to-government business is conducted. However, the BIA does not view the Tribe to be an organized tribe and, therefore declines to recognize Ms. Burley as a "tribal chairperson" in the traditional sense as one who exercises authority over an organized Indian tribe.

Declaration of Brian Golding, at 4, ¶ 9. A copy of Mr. Golding's declaration is enclosed for your convenience.

The status of the California Valley Miwok Tribe as an unorganized tribe lacking a sufficiently defined governmental structure and membership is described in more detail in other paragraphs of Mr. Golding's declaration and the March 26, 2004, letter to Ms. Burley from the Superintendent of the Central California Agency, a copy of which was attached to Mr. Golding's declaration as Exhibit "b," and a copy of which is enclosed for your ready reference.

We will be glad to try to keep you informed of the status of the litigation and the dispute over the organization and leadership of the California Valley Miwok Tribe. In the meantime, if you have

**Declaration S. KEEP  
Exhibit 1**

CVMT-2011-000923

any questions or if we can be of any assistance in the future in some other matter, please don't hesitate to call on us.

Sincerely,



Scott Keep  
Assistant Solicitor  
Branch of Tribal Government and Alaska  
Division of Indian Affairs

Enclosures

cc: John W. Spittler, Esq.  
California Gambling Control Commission  
2399 Gateway Oaks Drive, Suite 200  
Sacramento, CA

Thomas Wolfrum, Esq.  
1460 Maria Lane, Suite 340  
Walnut Creek, CA 94596

Debora G. Luther, Esq.  
Assistant United States Attorney  
United States Attorney's Office  
Eastern District of California  
501 I Street, Suite 10-100  
Sacramento, CA 95814

Phillip E. Thompson, Esq.  
Thompson Associates  
9450 Pennsylvania Avenue  
Suite 4  
Upper Marlboro, MD 20772

Brian Golding  
Tribal Operations Specialist  
Pacific Regional Office  
Bureau of Indian Affairs  
2800 Cottage Way  
Sacramento, CA 95825

McGREGOR W. SCOTT  
United States Attorney  
DEBORA G. LUTHER  
Assistant U.S. Attorney  
501 I Street, Suite 10-100  
Sacramento, California 95814  
Telephone: (916) 554-2720

Attorneys for Defendants

**ORIGINAL  
FILED**

APR 30 2004

CLERK  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

CALIFORNIA VALLEY MIWOK TRIBE, )  
formerly SHEEP RANCH RANCHERIA )  
OF ME-WUK INDIANS OF CALIFORNIA, )

Plaintiff,

v.

UNITED STATES OF AMERICA, )  
UNITED STATES DEPARTMENT OF )  
THE INTERIOR, GAIL NORTON, )  
SECRETARY OF INTERIOR, DAVID )  
ANDERSON<sup>1</sup>, ASSISTANT SECRETARY )  
OF THE INTERIOR FOR INDIAN )  
AFFAIRS, )

Defendants.

CASE NO. CIV.S-02-0912 FCD/GGH

DECLARATION OF BRIAN GOLDING, SR.,  
IN SUPPORT OF DEFENDANTS'  
OPPOSITION TO PLAINTIFF'S MOTION  
FOR SUMMARY JUDGMENT

DATE: May 14, 2004  
TIME: 10:00 A.M.  
COURTROOM: 2

I, BRIAN GOLDING, SR., declare:

1. I have been an employee of the Bureau of Indian Affairs since October 1997, when I was hired as a Tribal Operations Specialist. Currently, I serve half-time as a Tribal Operations Specialist in the Branch of Tribal Operations at the Central California Agency of the Bureau of Indian Affairs ("BIA") as well as half-time in the same position at the Pacific Regional Office of the BIA. I have personal knowledge of the facts set forth in this declaration.

<sup>1</sup> Former Assistant Secretary Neal A. McCaleb has retired from federal service. David Anderson is now the Assistant Secretary for Indian Affairs. Pursuant to Fed.R.Civ.P. 25(d), Mr. Anderson is substituted as defendant in place of Mr. McCaleb.

1           2. The Central California Agency ("CCA") provides assistance and information to  
2 approximately 54 tribes situated in Central California, including the California Valley Miwok Tribe,  
3 which was formerly known as the Sheep Ranch Rancheria of Me-Wuk Indians ("the Tribe"). CCA  
4 also maintains historical files pertaining to the tribes in our geographical jurisdiction, including files  
5 relating to the government's efforts to comply with the California Rancheria Act, Pub.L. 85-671, 72  
6 Stat. 619 (Aug. 18, 1968), *as amended*, Pub.L. 88-419, 78 Stat. 390 (Aug. 11, 1964). With respect to  
7 the Sheep Ranch Rancheria and its tribe, CCA has records dating back to 1915 and the records of this  
8 office are more extensive than those maintained by the Pacific Regional Office.

9           3. I have searched CCA's records to determine whether any objections were received in  
10 response to public notice of the election to be held on the issue of whether a plan should be drafted to  
11 distribute the assets of the Sheep Ranch Rancheria. I could find no record of any objections. I also  
12 searched for any records establishing that a conservatorship had been established for Mabel Hodge  
13 Dixie and did not find any. I searched for any records showing that notice had been published in the  
14 Federal Register confirming the final distribution of the assets of the Sheep Ranch Rancheria and  
15 confirming the termination of the federal-tribal relationship. Again, I did not find any.   4. I have  
16 searched the records of this office and have not found any record reflecting or suggesting that the  
17 Bureau of Indian Affairs ("BIA") has ever deemed Sheep Ranch Rancheria to be a terminated tribe.  
18 To the contrary and based upon the records of this office, the termination of the tribe was never  
19 completed and federal recognition was never withdrawn from this tribe. The earliest publication of  
20 federally recognized tribes of which I am aware is a booklet published in 1972 entitled "American  
21 Indians and Their Federal Relationship." The Sheep Ranch Rancheria is listed therein as a  
22 recognized tribe. In my search of the records of CCA, I have not found any record showing that a  
23 Notice of Termination was ever published in the Federal Register or other letter or notice stating the  
24 federal government's intention to terminate services to and/or relations with the Sheep Ranch  
25 Rancheria. For this reason and others, BIA does not view this tribe as a "restored" tribe, which is a  
26 term of art that refers to a tribe once acknowledged as a federally-recognized tribe, then was  
27 "terminated," and subsequently "restored" to federal recognition.



1           5. Among other things, termination would mean that tribal members would no longer be  
2 eligible to receive any services from the federal government based on their status as Indians. I have  
3 searched available records to determine whether services were ever denied to Mabel Hodge Dixie or  
4 her four sons since 1967, and found no such records. I did not discover any records demonstrating  
5 that BIA ever denied anyone any services on the grounds that the Sheep Ranch Rancheria was a  
6 terminated tribe. With respect to federally recognized tribes that are unorganized, have no formal  
7 government structure and/or have no formal enrollment document or list of members and where a  
8 distribution plan was prepared for the Tribe, such as Sheep Ranch Rancheria, it has been BIA's  
9 practice to acknowledge the distributees listed on the plan and their lineal descendants as putative  
10 members of the tribe. Pursuant to this practice, Yakima Dixie was and has been acknowledged by  
11 BIA as a putative member of the Tribe.

12           6. I am familiar with the "Report of Population by Tribe" dated February 8, 1989, that I  
13 understand appears as Plaintiff's Exhibit 29. As indicated on this report, the data thereon was derived  
14 from 1987/88 Labor Force Report, a document I have not located at this time. Each one of the tribes  
15 listed on this "Report of Population by Tribe" is a federally-recognized tribe. That "zero" is reported  
16 for Sheep Ranch Rancheria does not mean the Tribe is or was terminated. Instead, this report, which  
17 continues to be prepared today, is based on the service population area that was defined at that time in  
18 accordance with 25 C.F.R. § 20.1(r)(1989). Population "on" the reservation refers to persons living  
19 on trust land; population "off" reservation refers to persons living in "areas or communities adjacent  
20 or contiguous to reservations." 25 C.F.R. § 20.1(r)(1989). Consequently, the information contained  
21 in this "Report of Population by Tribe" means that BIA was unaware of tribal members living on the  
22 Sheep Ranch Rancheria or adjacent or contiguous thereto as of February 1989. It does not mean that  
23 there were no tribal members and is not used for that purpose.

24           7. I am familiar with the letter sent by Raymond Fry on November 26, 1997, which I  
25 understand appears as Plaintiff's Exhibit 30. I drafted this letter for Mr. Fry's signature. In stating  
26 that the Tribe "is not presently engaged in a government-to-government relationship with the United  
27 States," this office intended to convey that we did not have any ongoing or regular contact with  
28

1 anyone on behalf of the Sheep Ranch Rancheria of Me-Wuk Indians, as the Tribe was then known.  
2 Based on the records of this office, the Tribe was unorganized, lacked any formal government  
3 structure or governing documents, and consisted of a loosely knit community of Indians in Calaveras  
4 County. The Tribe had not engaged in contracting for services under the Indian Self-Determination  
5 Act and no one affiliated with the Tribe had requested any services or assistance from this office,  
6 apart from a request from one individual for housing assistance. Essentially, at that time, the Tribe  
7 kept to itself. In no way was the letter intended to suggest that the Tribe had no members or that the  
8 Tribe did not exist or had been terminated or, in any way, was ineligible for services or recognition  
9 from the federal government as a tribe.

10 8. Based on the records of this office and my own personal knowledge since coming to work  
11 for the Bureau of Indian Affairs, the Sheep Ranch Rancheria of Me-Wuk Indians, also known as the  
12 California Valley Miwok Tribe, has never been restored to federal recognition precisely because its  
13 federal recognition was never severed or ended. Certainly, the letter dated July 26, 2000, that served  
14 to introduce Ms. Burley to Assistant Secretary – Indian Affairs Kevin Gover, which I understand is  
15 plaintiff's exhibit 32 in support of its summary judgment motion, was not and is not intended to  
16 suggest that the tribe is a restored tribe. Within the BIA, this letter does nothing more and nothing  
17 less than simply introduce Ms. Burley. Moreover, this office does not have authority to restore  
18 federal recognition to tribes.

19 9. At the present time, the Bureau of Indian Affairs acknowledges Silvia Burley as the  
20 authorized representative of the California Valley Miwok Tribe with whom government-to-  
21 government business is conducted. However, the BIA does not view the Tribe to be an organized  
22 tribe and, therefore, declines to recognize Ms. Burley as a "tribal chairperson" in the traditional sense  
23 as one who exercises authority over an organized Indian tribe.

24 10. BIA recently received from Silvia Burley a document purporting to be the tribe's  
25 Constitution. Attached hereto as Exhibit "a" is a true and correct copy of that document. BIA has  
26 declined to accept the document as evidence that the Tribe is now organized. Attached hereto as  
27 Exhibit "b" is a true and correct copy of BIA's response to the Tribe concerning the constitution.

Pursuant to the provisions of 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 29<sup>th</sup> day of April 2004 in Sacramento, California.

  
BRIAN GOLDING, Sr.



## United States Department of the Interior

### BUREAU OF INDIAN AFFAIRS

Central California Agency  
650 Capitol Mall, Suite 8-500  
Sacramento, CA 95814

IN REPLY REFER TO

**MAR 26 2004**

Certified Mail No.7003 1680 0002 3896 9127  
Return Receipt Requested

Ms. Sylvia Burley, Chairperson  
California Valley Miwok Tribe  
10601 Escondido Pl.  
Stockton, California 95121

Dear Ms. Burley:

This letter acknowledges our February 11, 2004, receipt of a document represented to be the tribal constitution for the California Valley Miwok Tribe. It is our understanding that the Tribe has shared this tribal constitution with the Bureau of Indian Affairs (BIA) in an attempt to demonstrate that it is an "organized" tribe. Regretfully, we must disagree that such a demonstration is made.

Although the Tribe has not requested any assistance or comments from this office in response to your document, we provide the following observations for your consideration. As you know, the BIA's Central California Agency (CCA) has a responsibility to develop and maintain a government-to-government relationship with each of the 54 federally recognized tribes situated within CCA's jurisdiction. This relationship, includes among other things, the responsibility of working with the person or persons from each tribe who either are rightfully elected to a position of authority within the tribe or who otherwise occupy a position of authority within an unorganized tribe. To that end, the BIA has recognized you, as a person of authority within the California Valley Miwok Tribe. However, the BIA does not yet view your tribe to be an "organized" Indian Tribe and this view is borne out not only by the document that you have presented as the tribe's constitution but additionally, by our relations over the last several decades with members of the tribal community in and around Sheep Ranch Rancheria. (Let me emphasize that being an organized vis-à-vis unorganized tribe ordinarily will not impact either your tribe's day-to-day operations but could impact your tribe's continued eligibility for certain grants and services from the United States).

Where a tribe that has not previously organized seeks to do so, BIA also has a responsibility to determine that the organizational efforts reflect the involvement of the whole tribal community. We have not seen evidence that such general involvement was

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attempted or has occurred with the purported organization of your tribe. For example, we have not been made aware of any efforts to reach out to the Indian communities in and around the Sheep Ranch Rancheria, or to persons who have maintained any cultural contact with Sheep Ranch. To our knowledge, the only persons of Indian descent involved in the tribe's organization efforts, were you and your two daughters. We are unaware of any efforts to involve Yakima Dixie or Mr. Dixie's brother Melvin Dixie or any offspring of Merle Butler, Tillie Jeff or Lenny Jeff, all persons who are known to have resided at Sheep Ranch Rancheria at various times in the past 75 years and persons who have inherited an interest in the Rancheria. We are also not aware of any efforts to involve Indians( such as Lena Shelton) and their descendents who once lived adjacent to Sheep Ranch Rancheria or to investigate the possibility of involving a neighboring group. We are aware that the Indians of Sheep Ranch Rancheria were in fact, part of a larger group of Indians residing less then 20 miles away at West Point. Indeed, at your February 23, 2004 deposition, you yourself testified you were at one time of the West Point Indian Community; we understand as well, that you had siblings residing there for many years. The BIA remains available, upon your request, to assist you in identifying the members of the local Indian community, to assist in disseminating both individual and public notices, facilitating meetings, and otherwise providing logistical support.

It is only after the greater tribal community is initially identified that governing documents should be drafted and the Tribe's base and membership criteria identified. The participation of the greater tribal community is essential to this effort. We are very concerned about the designated "base roll" for the tribe as identified in the submitted tribal constitution; this "base roll" contains only the names of five living members all but one whom were born between 1960 and 1996, and therefore would imply that there was never any tribal community in and around Sheep Ranch Rancheria until you met with Yakima Dixie, asking for his assistance to admit you as a member. The base roll, thus, suggests that this tribe did not exist until the 1990's, with the exception of Yakima Dixie. However, BIA's records indicate with the exception not withstanding, otherwise.

Base membership rolls are used to establish a tribe's cohesiveness and community at a point in time in history. They would normally contain the names of individuals listed on historical documents which confirm Native American tribal relationships in a specific geographical region. Since tribes and bands themselves did not usually possess such historical documents, therefore, tribal base rolls have included persons listed on old census rolls, Indian Agency rolls, voters rolls, etc. Our experience with your sister ; Miwok tribes (e.g., Shingle Springs Rancheria, Tuolumne Rancheria, Ione Band, etcetera) leads us to believe that Miwok tradition favors base rolls identifying persons found in Miwok tribes stretching from Amador County in the North to Calaveras and Mariposa Counties in the South. The Base and Enrollment criteria for these tribes vary; for example, Amador County tribes use the 1915 Miwok Indian Census of Amador County, El Dorado County tribes utilize the 1916 Indian Census Roll, tribe(s) in Tuolumne County utilize a 1934 IRA voters' list. The base roll typically constitutes the

Page 3 of 4

cornerstone of tribal membership and based upon our experience, has been the basic starting point and foundation for each of the Miwok tribes in our jurisdiction, i.e., the Ione Band of Miwok Indians, Shingle Springs Rancheria and Tuolumne Rancheria.

We must continue to emphasize the importance of the participation of a greater tribal community in determining membership criteria. We reiterate our continued availability and willingness to assist you in this process and that via PL 93-638 contracts intended to facilitate the organization or reorganization of the tribal community, we have already extended assistance. We urge you to continue the work that you have begun towards formal organization of the California Valley Miwok Tribe.

If we can assist your efforts in any way, please contact Raymond Fry, Manager, Tribal Services, at (916) 930-3794.

Should you wish to appeal any portion of this letter, you are advised that you may do so by complying with the following:

This decision may be appealed to the Regional Director, Pacific Regional Office, Bureau of Indian Affairs, 2800 Cottage Way, Sacramento, California 95825. In accordance with the regulations in 25 CFR Part 2 (copy enclosed). Your notice of appeal must be filed in this office within 30 days of the date you receive this decision. The date of filing or notice is the date it is post marked or the date it is personally delivered to this office. Your notice of appeal must include your name, address and telephone number. It should clearly identify the decision to be appealed. If possible attach a copy of the decision. The notice of and the envelope which it is mailed, should be clearly labeled "NOTICE OF APPEAL." The notice of appeal must list the names and addresses of the interested parties known to you and certify that you have sent them copies of the notice.

You must also send a copy of your notice to the Regional Director, at the address given above.

If you are not represented by an attorney, you may request assistance from this office in the preparation of your appeal.

Page 4 of 4

If no timely appeal is filed, this decision will become final for the Department of the Interior at the expiration of the appeal period. No extension of time may be granted for filing a notice of appeal.

Sincerely,

*Dale Risling, Sr.*

Dale Risling, Sr.  
Superintendent

CC: Pacific Regional Director  
Debora Luther, Assistant US Attorney  
Myra Spicker, Deputy Solicitor  
Yakima Dixie-Tribal Member



STATE OF CALIFORNIA

**GAMBLING CONTROL COMMISSION**

2399 Gateway Oaks Drive, Suite 100  
Sacramento, CA 95833-4231

P.O. BOX 526013  
Sacramento, CA 95852-6013

(916) 263-0700  
(916) 263-0499 Fax

Arnold Schwarzenegger, Governor

DEAN SHELTON, CHAIRMAN

MICHAEL C. PALMER

J.K. SASAKI

ARLO E. SMITH

May 28, 2004

Thomas Wolfrum, Attorney at Law  
1460 Maria Lane, Suite 340  
Walnut Creek, CA 94596

Dear Mr. Wolfrum:

This letter will acknowledge receipt of your facsimile transmittal on May 21, 2004, after the close of normal business hours that was dated May 20, 2004. In your facsimile document you state you represent Yakima K. Dixie and the Sheep Ranch Rancheria of MiWok Indians of California (aka California Valley Miwok Tribe). Additionally, you sent a copy of a letter addressed to me from Scott Keep, Assistant Solicitor, with the Office of the Solicitor - United States Department of Interior.

In your facsimile document you also state that Mr. Keep's letter should be sufficient for the California [Gambling Control] Commission to withhold payment from the California Valley Miwok Tribe until Yakima K. Dixie's appeal is resolved. We have reviewed Mr. Keep's letter from the Office of the Solicitor with the United States Department of Interior and have followed up on the meaning of the comments regarding an "(appeal) pending before it". We will continue to seek clarification of this matter with the United States Department of Interior and the Bureau of Indian Affairs. However, at the present time this letter does not provide sufficient information to determine if a valid and accepted appeal is in the receipt of either of these agencies, or any other proper entity, that will be addressed and ruled upon. Therefore, until such time as we receive appropriate documentation that a valid appeal of the BIA recognition of tribal leadership has been accepted for review we will not be able to withhold payments from the Indian Gaming Revenue Sharing Trust Fund to the California Valley Miwok Tribe.

Thank you for your recent correspondence. If you have any questions please contact me at the below telephone number.

Sincerely,

A handwritten signature in cursive script that reads "Gary Qualset".

Gary Qualset, Deputy Director  
Licensing and Compliance Division  
(916) 263-4600

**Declaration S. KEEP  
Exhibit 2**

cc: Scott Keep, Assistant Solicitor, US Department of the Interior – Office of the Solicitor 00934