

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA
Civil Division**

THE CALIFORNIA VALLEY MIWOK
TRIBE, *et al.*,

Plaintiffs,

v.

KEN SALAZAR, in his official capacity as
Secretary of the United States Department of
the Interior, *et al.*,

Defendants.

Case No. 1:11-cv-00160-RWR

Hon. Richard W. Roberts

JOINT MOTION FOR TEMPORARY STAY OF LITIGATION

Plaintiffs and the Defendants (“the Parties”) respectfully move this Court for an order to temporarily stay the current litigation and all associated deadlines and obligations in light of the April 1, 2011, decision of the defendant Assistant Secretary - Indian Affairs of the United States Department of the Interior (the “Department”) (“2011 Decision”) (Exhibit 1 hereto). The 2011 Decision “set aside” the Assistant Secretary’s December 22, 2010, decision regarding the organization and governance of the California Valley Miwok Tribe (“Tribe”) (“2010 Decision”) (Exhibit 2 hereto). In the 2011 Decision, the Assistant Secretary stated that he will issue a “reconsidered decision.” (Exhibit 1). On April 8, 2011, the Assistant Secretary sent a letter to both Mr. Yakima Dixie and Ms. Silvia Burley requesting responsive briefing pertaining to a number of issues. April 8, 2011, Letter, at 2-3 (Exhibit 3 hereto). The Assistant Secretary set May 3, 2011, as the deadline for the submission of those briefs, and both parties made submissions to the Assistant Secretary on that date. The Assistant Secretary is currently working on his reconsidered decision.

The Parties agree that Department should be afforded a reasonable period of time to prepare and issue the reconsidered decision. Thus, the Parties respectfully seek a temporary stay of the current litigation until July 7, 2011. Under the present schedule, the Defendants responsive pleading to Plaintiffs' Complaint is due May 27, 2011. The proposed order would stay the aforementioned deadline. The proposed order would also stay any applicable deadline for the issuance of a scheduling order under Rule 16(b), Fed. R. Civ. P. However, either party would have the right to request that the stay be lifted prior to July 7, 2011 in the event that the Assistant Secretary issues his reconsidered decision prior to that date.

A. STATEMENT OF FACTS

Following Plaintiffs filing of the Complaint, Docket Entry 1, and on April 1, 2011, the Assistant Secretary issued the 2011 Decision, which "set aside" the 2010 Decision and set in motion administrative reconsideration. The 2011 Decision states,

Subsequent actions by the parties involved in this dispute have led me to reconsider the matters addressed in the December 22, 2010, decision letter. By means of today's letter, the December 22 decision is set aside.

I believe that the longstanding problems with the Tribe need prompt resolution, and I remain committed to the timely issuance of my reconsidered decision. I am mindful, however, that additional briefing may inform my analysis of the problems presented in this dispute. To that end, I will issue a briefing schedule in the coming week, requesting submissions from you and from Ms. Silvia Burley on specific questions of fact and law relevant to the referred question.

(Exhibit 1, at 1). On April 8, 2011, the Assistant Secretary requested that both Mr. Dixie and Ms. Burley brief the various issues affecting this dispute, specifically identifying the following issues:

1. "Please brief your views on whether the Secretary has an obligation to ensure that potential tribal members participate in an election to organize the Tribe."

2. “Please explain your position regarding the status of the Tribe’s organization and the Federal Governments’ duty to assist the Tribe in organizing.”
3. “Please brief your views on what the Secretary’s role is in “determining whether a tribe has properly organized itself.”

Id. at 2-3. Submissions from the interested parties we filed May 3, 2011. The Department is working on its response to those submissions.

B. THE COURT SHOULD TEMPORARILY STAY THIS LITIGATION TO ALLOW FOR THE DEPARTMENT TO ISSUE A RECONSIDERED DECISION ON THE ORGANIZATIONAL AND GOVERNANCE ISSUES BEFORE IT.

As a result of the Assistant Secretary’s decision to vacate the 2010 Decision and to request additional briefing regarding various organizational and governance issues before the BIA, it is appropriate to *stay* this litigation while the parties await issuance of a reconsidered decision by the Department. The “power to stay proceedings is incidental to the power inherent in every court to control the disposition of the cases on its docket with economy of time, effort for itself, for counsel, and for litigants.” *Landis v. North Am. Co.*, 299 U.S. 248, 254 (1936); *see also Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1426-27 (Fed. Cir. 1988) (“Courts have inherent power to manage their dockets and stay proceedings”); *Rohr Industries v. Washington Metro Area Transit Auth.*, 720 F.2d 1319, 1325 (D.C. Cir. 1983) (“Courts are certainly empowered to delay action where there is a likelihood that a related, though not identically overlapping agency action may produce results that will render the complex fact pattern simple, or the lengthy proceeding short”).

Count I of the Complaint challenges a decision of the Department of the Interior that has been withdrawn. Defendants believe that a stay would conserve judicial resources, as well as

that of the parties, by preventing premature litigation. Plaintiffs filed their suit challenging a “final agency action” that has been withdrawn. Action in the district court should be stayed until the Assistant Secretary’s reconsidered decision is issued, providing the court with a final agency action ripe for review under the Administrative Procedure Act, should review be necessary. Plaintiffs believe the case should be stayed rather than dismissed because: “In general, when primary jurisdiction lies with an administrative agency, the district court should stay the proceedings in front of it, not dismiss the suit.” *American Ass’n of Cruise Passengers v. Cunard Line, Ltd.*, 31 F.3d 1184, 1187 (D.C. Cir. 1994). “The doctrine of primary jurisdiction, despite what the term may imply, does not speak to the jurisdictional power of the federal courts. It simply structures the proceedings as a matter of judicial discretion, so as to engender an orderly and sensible coordination of the work of agencies and courts.” *United States v. Bessemer and Lake Erie R.R. Co.*, 717 F.2d 593, 599 (D.C. Cir. 1983) (internal quotation marks omitted).

A temporary stay of the case for a reasonable period of time (until July 7, 2011) rather than dismissal, may help a timely resolution of this long-standing dispute and, Plaintiffs submit that the stay (rather than a dismissal) may better protect their interests in connection with the issuance of the Assistant Secretary’s reconsidered decision.

CONCLUSION

For the reasons set forth above, Plaintiffs and Defendants jointly request that the Court temporarily stay this litigation until July 7, 2011, to allow the Assistant Secretary for Indian Affairs to receive and respond to the submissions filed on May 3, 2011, provided that either Plaintiffs or Defendants may request that the stay be lifted prior to July 7, 2011 in the event that the defendant Assistant Secretary - Indian Affairs of the United States Department of the Interior

issues his reconsidered decision with regard to his December 22, 2010 Decision prior to July 7, 2011, and that the parties be ordered to file a joint status report no later than July 15, 2011.

Respectfully submitted,

/s/ M Roy Goldberg

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Dated: May 19, 2011

CERTIFICATE OF SERVICE

I certify that on May 19, 2011, I caused a copy of the foregoing Joint Motion for Stay to be filed with the Court pursuant to the electronic filing rules. All participants are registered CM/ECF users, and will be served by the CM/ECF system.

/s/
M. Roy Goldberg