

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

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

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**EMERGENCY SUPPLEMENT TO THE CALIFORNIA VALLEY MIWOK TRIBE'S  
MOTION TO INTERVENE AS DEFENDANT**

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Proposed Intervenor-Defendant the California Valley Miwok Tribe (“Tribe”) respectfully submits the following Emergency Supplement to its previously filed Motion to Intervene as a Defendant in the instant action. The Tribe believes that such emergency action is necessary in light of the statements made in the Joint Status Report and Proposed Order filed by Plaintiffs and Defendants late this afternoon, September 1, 2011. *See* Dkt. No. 27.

As stated in the Joint Status Report, on August 31, 2011, the Assistant Secretary – Indian Affairs of the United States Department of the Interior rendered a decision (“Decision”) with respect to the United States’ definitive and final position as to whom it recognizes as the governing entity of the Tribe and the citizens having rights to participate in the Tribe’s government, for purposes of maintaining a government-to-government relationship between the Tribe and the United States. (A true and correct copy of the Decision is attached hereto as Exhibit “A”).

The Decision sets forth, in very clear terms, that the entity recognized by the United

States for purposes of government-to-government dealings with the Tribe is the five (5) member General Council established on November 5, 1998 through the enactment of Resolution #GC-98-01, which the Decision accepts “as the interim governing document of the Tribe.” (*See* Exhibit A, p.7). The Decision also makes clear that the Tribe “has been continuously recognized and its political relationship with the Federal government has not been terminated.” (*Id.*) Further, the Decision acknowledges that while the United States owes a trust responsibility to the five (5) citizens comprising the Tribe’s membership and governing body, it owes *no such duty* or obligation to any “potential citizens of the Tribe.” (*Id.*) Finally, it is stated that the Decision is “final for the Department and *effective immediately.*” (*Id.* at 8) (emphasis added).

In the Joint Status Report filed with this Court late this afternoon, the parties state that

[w]hile the [Decision] is final for the Department for purpose of judicial review, the Assistant Secretary stayed the effectiveness of the [Decision] pending resolution of this matter. As a result, the [Decision] will have no force and effect until such time as this court renders a decision on the merits of plaintiffs’ claims or grants a dispositive motion of the Federal Defendants.

(*See* Joint Status Report, ¶ 13). The Proposed Order filed concurrently with the Joint Status Report requests that this Court stay the effectiveness of the Decision, rendering it without force and effect, until the disposition of the instant litigation.

The above statements made in the Joint Status Report are misleading at best. By its plain terms, the Decision did not render itself without effect, pending resolution of the instant action. Rather, the Decision stated that it was “effective immediately” and that “*implementation*” of the Decision was stayed, pending resolution of the case at hand. (*See* Exhibit A, p.8). While the intent behind the meaning of the “implementation” is arguably ambiguous when used concurrently with the phrase “effective immediately,” such interpretation is simply not for the parties or this Court to undertake based upon the bare assertions contained in the Joint Status Report. The sole purpose of the Joint Status Report, following several extensions provided by this Court, is to inform the Court of the Assistant Secretary’s Decision, and to provide the Court

with the Decision for careful review and consideration, so that the Court may determine how to proceed in accordance with the Decision.

Instead, the Joint Status Report takes an affirmative position, urging the Court to unilaterally strip the effectiveness of the Decision without allowing for any clarification, if needed, from the Assistant Secretary regarding its intended meaning as to the effectiveness of the Decision and without providing the very party that is being aggrieved by these actions - the Tribe itself - from having the opportunity to be heard in this Court. The Tribe filed a Motion to Intervene as a Defendant on March 17, 2011 (*see* Dkt. 11) and also filed a Motion to Expedite the Ruling on this Motion on March 22, 2011 (*see* Dkt. 13). The Court has yet to rule on these Motions. Because the action requested in the Joint Status Report and Proposed Order is effectively requesting that this Court issue a preliminary injunction to prevent the effectiveness of the Decision<sup>1</sup> - without any briefing or due process on the matter - it is imperative that this Court first consider and rule on the Tribe's pending Motion to Intervene prior to rendering any substantive decisions in this case. The Tribe further requests leave to amend its Motion to Intervene, in light of the new information provided in the Decision.

Due to the serious implications of Joint Status Report, as well as the exigent circumstances that the Tribe has experienced for years and continues to experience with every day that the effectiveness of the Decision is delayed, the Tribe respectfully requests that, prior to rendering any additional Orders or rulings in the instant action, this Court carefully review the Decision and the implications resulting therefrom (*See* Exhibit A). The Tribe also respectfully requests that this Court (1) delay rendering any substantive rulings or Orders in the instant action (including the requested action detailed in the Joint Status Report and Proposed Order) until and

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<sup>1</sup> It is important to remind this Court that when Plaintiffs initially sought to prevent the effectiveness of the December 22, 2010 Assistant Secretary decision, they followed the appropriate procedures and filed a Motion seeking a Preliminary Injunction on March 16, 2011 (Dkt. No. 8). Plaintiffs subsequently withdrew this Motion upon the Assistant Secretary's determination to reconsider his December 22, 2010 decision (Dkt. No. 19). Rather than once again seek a preliminary injunction, the Plaintiffs instead attempt to obtain the effect of an injunction through the filing of a simple Joint Status Report.

unless the Court considers and renders a ruling on Proposed Intervenor-Defendant's Motion to Intervene, and/or (2) allows for the Assistant Secretary-Indian Affairs to clarify its position as to the intended effect of the Decision as it pertains to this litigation and as requested in a recent letter submitted by the Tribe (*See Exhibit B*).

Dated: September 1, 2011

Respectfully submitted,

By: /s/ Robert A. Rosette  
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**CERTIFICATE OF SERVICE**

I certify that on September 1, 2011, I caused a true and correct copy of the foregoing Emergency Supplement to California Valley Miwok Tribe's Motion to Intervene As Defendant to be served on the following counsel via electronic filing:

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