

## **EXHIBIT B**



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September 1, 2011

VIA E-MAIL

The Honorable Larry Echo Hawk  
Assistant Secretary for Indian Affairs  
Department of the Interior  
1849 C Street, N.W.  
Washington, D.C. 20240

Re: *August 31, 2011 Decision*

Dear Assistant Secretary Echo Hawk:

On behalf of the California Valley Miwok Tribe ("Tribe"), the purpose of this correspondence is to clarify the Tribe's understanding of your decision, dated August 31, 2011 ("Decision"), in light of recent documents filed today by the United States Department of Interior in the U.S. District Court for the District of Columbia, *California Valley Miwok Tribe v. Salazar*, C.A. No. 1:11-cv-00160-RWR (filed 03/16/11) ("District Court Litigation").

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* Decision, 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 "potential citizens of the Tribe." (*Id.*) Finally, the Decision states that it is "final for the Department and *effective immediately*." (*Id.* at 8) (emphasis added).

Based on these definitive statements and the position taken by the Department, the Tribe's understanding is that the Decision sets forth the United States' recognition of the five (5) member General Council as the Tribe's interim governing body, for purposes of fulfilling the Federal government's trust responsibility to the Tribe, pending resolution of the District Court Litigation.

While the Tribe believes that the Department made its position clear in its Decision with respect to its relationship with the Tribe, the documents filed today in the District Court

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Litigation by the United States Department of Justice ("DOJ") and the non-member group ("Non-Members"), demonstrates what the Tribe believes to be a clear disconnect with the Department's position. In the Joint Status Report filed today (attached herein), 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 provides that the D.C. District Court will stay the effectiveness of the Decision, rendering it without force and effect, until the disposition of the District Court Litigation.

As noted above, contrary to the statements made in the Joint Status Report, the Decision did not render itself without effect, pending resolution of the District Court Litigation. Rather, the Decision stated that it was "effective immediately" and implementation of the Decision would not take place until the matters in the District Court Litigation were resolved. It is the Tribe's position that, consistent with the strong policy position taken in the Decision as to the United States' trust responsibility to federally-recognized Indian tribes, implementation of the Decision is not required for interim recognition of the Tribe's General Council for purposes of its government-to-government relationship with the United States. Indeed, this is the very reason for which the Tribe believes that you made clear that your Decision was "effective immediately."

In their recently-filed documents, not only are the DOJ and the Non-Members stripping the Department of its ability to adhere to its well-established policy of interim governmental recognition pending resolution of litigation, but it is preventing the very party that is being aggrieved by these delay tactics - the Tribe itself - from having the opportunity to be heard in the District Court. Although the Tribe filed a Motion to Intervene as a Defendant in the District Court Litigation, the Court has yet to rule on this Motion. Further, the DOJ's joined position with the opposing side in the District Court Litigation, effectively consents to an unopposed preliminary injunction, in the form of a Proposed Order submitted with a Joint Status Report, without even providing the Tribe an opportunity to make its position on the matter known. Not only is such action questionable from a procedural standpoint, but it also effectively requests that a preliminary injunction of the Decision be granted, without any say, or opportunity to be heard by the Tribe itself.

The Tribe believes that the serious implications of today's filings, 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, warrant intervention from the Department and its Solicitors. Because the Court will likely rule on the Joint Status Report tomorrow, the Tribe respectfully requests that immediate action be taken by the Department which (1) clarifies the meaning of the Department staying the Decision's "implementation;" and/or (2) requests that



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ruling on the recently-filed documents be delayed, pending determination of the Tribe's Motion to Intervene.

Thank you for recognizing the urgency of this matter and for continuing to respect the rights of the Tribe and its citizens.

Please do not hesitate to contact me with any concerns (480) 242-9810.

Sincerely,

ROSETTE, LLP

A handwritten signature in black ink, reading "Robert A. Rosette". The signature is fluid and cursive, with the first name "Robert" being more prominent and the last name "Rosette" following in a similar style.

Robert Rosette

Enclosures

cc: Sequoyah Simermeyer, Counselor to the Assistant Secretary – Indian Affairs  
Bryan Newland, Counselor to the Assistant Secretary – Indian Affairs  
Patrice Kunesh, Deputy Solicitor – Indian Affairs, Department of the Interior  
James Porter, Attorney Advisor, Office of the Solicitor, Department of the Interior

**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 STATUS REPORT AND PROPOSED ORDER REGARDING THE  
STATUS OF THE RECONSIDERED DECISION OF THE ASSISTANT  
SECRETARY - INDIAN AFFAIRS**

Pursuant to this Court's order of August 15, 2011, the parties provide the following status report to the Court.

1. On January 24, 2011, Plaintiffs brought suit challenging the December 22, 2010 decision of the Assistant Secretary - Indian Affairs of the United States Department of the Interior ("Assistant Secretary"). *See* Dkt. No. 1.
2. On March 16, 2011, Plaintiffs filed a Motion for Preliminary Injunction, Dkt. No. 8, and, after granting the Defendants' Consent Motion for an Extension of Time, Dkt. No. 17, this Court ordered the Defendants to file their opposition to Plaintiffs' Motion for a Preliminary Injunction by April 5, 2011.
3. However, on April 1, 2011, the Assistant Secretary - Indian Affairs of the United States Department of the Interior set aside the prior December 22, 2010 decision

regarding the organization and governance of the California Valley Miwok Tribe.

*See* Joint Motion to Stay Litigation, Dkt. No. 22, ex. 1.

4. On April 8, 2011, the Assistant Secretary sent letters to both Mr. Yakima Dixie and Ms. Silvia Burley requesting responsive briefing pertaining to a number of issues. Joint Motion to Stay Litigation, Dkt. No. 22, ex. 3.
5. The April 8, 2011, letter set May 3, 2011, as the deadline for the respective parties' submission of briefs responding to the Assistant Secretary's inquiries. Both Mr. Dixie and Ms. Burley submitted briefs on May 3, 2011.
6. On April 19, 2011, the parties jointly requested this Court stay the litigation and all attendant deadlines so that the Assistant Secretary could prepare and issue the reconsidered decision. *See* Joint Motion to Stay Litigation, Dkt. No. 22.
7. On April 25, 2011, this Court issued a minute order granting the parties' joint motion to stay until July 7, 2011, and ordered the parties to file a joint status report and proposed order on July 7, 2011 as well.
8. On July 7, 2011, the parties filed a joint status report and requested this Court stay the litigation and all attendant deadlines until August 15, 2011, to accommodate the Assistant Secretary's ongoing preparation of the reconsidered decision. *See* Joint Status Report Regarding the Status of the Reconsidered Decision of the Assistant Secretary - Indian Affairs and Motion for Extension of the Temporary Stay of Litigation, Dkt. No. 23.
9. Plaintiffs consented to the extension on the condition that it was the final extension and that this Court order the Assistant Secretary to issue his reconsidered decision by August 15, 2011. *Id.* §§ 9, 9(a).

10. Defendants would not consent, however, to a condition mandating final agency action, and requested that should the Assistant Secretary not issue a reconsidered decision by August 15, 2011, that the result be a release of the voluntary stay. *Id.* §§ 9, 9(b). Accordingly, the parties each submitted a separate proposed order. *See id.*, Attachment 1-2.
11. On July 11, 2011, this Court granted the Joint Motion for Temporary Stay of Litigation and adopted Plaintiffs' proposed order. *See* Order Granting Joint Motion for Temporary Stay of Litigation, Dkt. No. 24. This Court's order struck paragraph 2, which requested, "This extension of the temporary stay shall be the final one granted by the Court and is conditioned upon the Assistant Secretary issuing his decision on reconsideration of the December 22, 2010 Decision on or before August 15, 2011." *Id.*
12. On August 12, 2011, the parties again requested the Court to extend the stay anticipating the issuance of the decision on August 26, 2011. This Court granted that request and stayed the litigation until September 2, 2011. *See* Order, Staying case until 09/02/11, Dkt. No. 26.
13. The Assistant Secretary issued the decision on Wednesday August 31, 2011. The Assistant Secretary reinstated his prior decision. While the August 31, 2011 decision is final for the Department for purpose of judicial review, the Assistant Secretary stayed the effectiveness of the August 31, 2011 decision pending resolution of this matter. As a result, the August 31, 2011 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.



14. Accordingly, no further temporary stay of the litigation is required.
15. Plaintiffs and Defendants request that the stay of the litigation be terminated and that a joint Status Report be filed by September 16, 2011 and that the Proposed Order be adopted.

Respectfully submitted this 1st day of September, 2011.

Respectfully submitted,

/s/ M Roy Goldberg  
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COUNSEL FOR DEFENDANTS

**CERTIFICATE OF SERVICE**

I certify that on September 1, 2011, I filed a copy of the foregoing Joint Status Report and Proposed Order Regarding the Status of the Reconsidered Decision of the Assistant Secretary – Indian Affairs was 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/  
Roy Goldberg

**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

**ORDER**

Having reviewed and considered the “Joint Status Report Regarding the Status of the Reconsidered Decision of the Assistant Secretary - Indian Affairs” filed by the Plaintiffs and Defendants in this case, it is hereby ORDERED that the temporary stay of this litigation is terminated.

It is hereby FURTHER ORDERED that:

1. The Decision of the Assistant Secretary dated August 31, 2011 is stayed and 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.
2. Plaintiffs and Defendants will file a Joint Status Report on or before September 16, 2011.
3. Defendants shall not be required to file a responsive pleading to the Complaint until further Order of this Court.

4. Any applicable deadline for the issuance of a scheduling order under Rule 16(b), Fed.

R. Civ. P., is stayed pending further Order of this Court.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2011.

By the Court:

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United States District Judge