

**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

**PLAINTIFFS' RESPONSE TO THE "EMERGENCY SUPPLEMENT"
FILED BY THE PROPOSED INTERVENOR**

Plaintiffs respectfully hereby respond to the "Emergency Supplement to the California Valley Miwok Tribe's Motion to Intervene as Defendant," Docket No. 28 (the "Emergency Supplement"). The Emergency Supplement fails to acknowledge the clear and obvious fact that the Defendants, *sua sponte*, decided to "stay" the impact of the agency's new reconsidered decision dated August 31, 2011 (the "August 31 Decision") until after this Court has completed its review of the August 31 Decision. Specifically, page 8 of the August 31 Decision states:

This decision is final for the Department and effective immediately, ***but implementation shall be stayed pending resolution of the litigation in the 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).*** (Emphasis added)

By *sua sponte* granting this relief, the agency made it unnecessary for Plaintiffs to seek a stay of the August 31 Decision from either the agency or this Court, pending resolution of the Plaintiffs' pending challenge to the August 31 Decision based on that Decision's violation of the Administrative

Procedure Act, 5 U.S.C. 706, this Court's prior ruling (affirmed by the D.C. Circuit), and other applicable statutes and precedent.

Consistent with the August 31 Decision, Plaintiffs and Defendants stated, in their Joint Status Report to this Court dated September 1, 2011, that "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." Docket No. 27 (¶ 13).

Despite the clarity of the Defendants' agreement to stay the impact of the August 31 Decision pending this Court's review, and the Defendants' reiteration of that intent in the Joint Status Report, the prospective intervenor nevertheless seeks a construction of the August 31 Decision which would allow it immediately to seek to implement the August 31 Decision. For example, the prospective intervenor wants to use the August 31 Decision in a pending California state court proceeding to obtain more than \$7.1 million in California Gambling Control Commission Indian Gaming Revenue Sharing Trust Fund payments that are being withheld pending resolution of the tribal governance issues at the center of this case. *See* Exhibit 2 to Memorandum from California Gambling Control Commission, July 28, 2011 (Exhibit A hereto). As long as the August 31 Decision is stayed, the prospective intervenor will not be able to use that Decision to access those funds.

Although Plaintiffs vigorously oppose the result of the August 31 Decision, it was entirely appropriate for Defendants to "stay" the "implementation" of the Decision pending the outcome of this litigation. Notwithstanding anything asserted to the contrary in the "Emergency Supplement," the Defendants' decision to stay the implementation of the August 31 Decision is controlling.

Finally, it should be emphasized that the prospective intervenor's groundless "Emergency Supplement" is yet another example of its efforts to improperly delay and prolong the outcome of this case, which should factor against the granting of the pending motion to intervene. *See* "Plaintiffs' Opposition to California Miwok Tribe's Motion to Intervene as Defendant," Docket No. 14 (March 29, 2011), at 7-9; Rule 24(b)(3), Fed. R. Civ. P.

Respectfully submitted,

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Dated: September 6, 2011

CERTIFICATE OF SERVICE

I certify that on September 6th, 2011, I filed a copy of the foregoing Response 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
Roy Goldberg