

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

THE CALIFORNIA VALLEY MIWOK  
TRIBE,  
11178 Sheep Ranch Road  
Mountain Ranch, CA 95246

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

THE TRIBAL COUNCIL,  
11178 Sheep Ranch Road  
Mountain Ranch, CA 95246

YAKIMA DIXIE,  
11178 Sheep Ranch Road  
Mountain Ranch, CA 95246

VELMA WHITEBEAR,  
213 Downing Drive  
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ANTONIA LOPEZ  
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MICHAEL MENDIBLES,  
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EVELYN WILSON  
4104 Blagen Boulevard  
West Point, CA 95255

ANTOINE AZEVEDO,  
4001 Carribee Court  
North Highlands, CA 95660

Plaintiffs,

v.

KEN SALAZAR, in his official capacity as  
Secretary of the United States Department of  
the Interior,  
United States Department of the Interior

1849 C Street, N.W.  
Washington, D.C. 20240  
LARRY ECHO HAWK, in his official  
capacity as Assistant Secretary-Indian Affairs  
of the United States Department of the Interior,  
Department of the Interior  
1849 C Street, N.W.  
Washington, D.C. 20240

MICHAEL BLACK, in his official capacity as  
Director of the Bureau of Indian Affairs within  
the United States Department of the Interior,  
Bureau of Indian Affairs  
MS-4606  
1849 C Street, N.W.  
Washington, D.C. 20240

Defendants.

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**MOTION TO DISMISS PLAINTIFFS' FIRST AMENDED COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE RELIEF**

**(ORAL ARGUMENT REQUESTED)**

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Intervenor-Defendant the California Valley Miwok Tribe (“Tribe”), a federally-recognized Indian tribe, respectfully moves for dismissal of the above-captioned action for lack of subject matter jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1), for failure to join and indispensable party pursuant to Fed. R. Civ. P. 19, and for failure to state a claim upon which relief can be granted pursuant to Fed. R. Civ. P. 12(b)(6).

The instant action must be dismissed pursuant to Fed. R. Civ. P. 12(b)(1) because this Court lacks jurisdiction over Plaintiffs’ claims for three distinct and compelling reasons. First, as demonstrated definitively and once and for all by Assistant Secretary Larry Echo Hawk’s August 31, 2011 final agency action (“August 2011 Decision”), Plaintiffs, as individuals that have never

in the Tribe's entire history been recognized by either the Tribe or the United States as members of this Tribe, lack standing to bring the claims raised in their First Amended Complaint ("Amended Complaint"), and this Court, accordingly, lacks jurisdiction over their claims. Second, based upon decades of well-established federal precedent, this Court lacks jurisdiction to adjudicate internal tribal disputes, as was the scope of the issue within the August 2011 Decision, and which Plaintiffs unabashedly seek to challenge under the guise of an APA action. Third, the Amended Complaint asserts time-barred claims that are outside of this Court's jurisdiction.

The action must also be dismissed pursuant to Fed. R. Civ. P 19 because Plaintiffs have failed to join the Tribe, who is unequivocally a necessary and indispensable party to the instant action.

The final ground for this Court's dismissal of the instant action is pursuant to Fed. R. Civ. P 12(b)(6), because the Amended Complaint fails to state any claims against the United States upon which relief can be granted. Based on the foregoing grounds for dismissal, the Tribe respectfully requests that the Court dismiss Plaintiffs' Amended Complaint.

This motion is based on the accompanying Statement of Points and Authorities; the Declaration of Robert A. Rosette In Support of Proposed Intervenor-Defendant's Motion To Dismiss Plaintiff's First Amended Complaint for Declaratory and Injunctive Relief ("RAR Decl."), and a proposed Order Dismissing Plaintiffs' Amended Complaint; the oral argument at the hearing on this matter, which the Tribe specifically requests; all pleadings and records heretofore filed in this action; and all relevant matters subject to judicial notice.

For the reasons set forth fully in the Statement of Points and Authorities, the Tribe respectfully requests that the Court grant its Motion to Dismiss the Amended Complaint.

Respectfully submitted this 13th day of December, 2011.

By: /s/ Robert A. Rosette  
Robert A. Rosette  
(D.C. Bar No. 457756)  
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Attorney for Proposed Intervenors,  
The California Valley Miwok Tribe

**CERTIFICATE OF SERVICE**

I certify that on December 13, 2011, I caused a true and correct copy of the foregoing Motion to Dismiss Plaintiffs' First Amended Complaint for Declaratory and Injunctive Relief, the Supporting Statement of Points and Authorities, the Declaration of Robert A. Rosette, and a proposed Order to be served on the following counsel via electronic filing:

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**(Pro Hac Vice Pending)**  
*Counsel for Plaintiffs*

/s/ Robert A. Rosette