

**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

**PROPOSED INTERVENOR-DEFENDANT'S REPLY TO PLAINTIFFS' OPPOSITION
TO MOTION TO EXPEDITE CONSIDERATION OF THE TRIBE'S AMENDED
MOTION FOR LEAVE TO INTERVENE AS DEFENDANT**

Proposed Intervenor-Defendant, the California Valley Miwok Tribe ("Tribe"), respectfully submits its reply to Plaintiffs' opposition to the Tribe's Motion Expedite Consideration of its Amended Motion for Leave to Intervene as Defendant ("Amended Motion"), filed on December 29, 2011 ("Opposition," Dkt. No. 39). Despite Plaintiffs' contentions, good cause existed at the time this Court granted expedited consideration of its original Motion to Intervene (*See* Minute Order dated March 25, 2011), and it continues to exist to warrant expedited consideration of the Tribe's Amended Motion.

Plaintiffs allege that the Tribe's request for expedited consideration of its Amended Motion assumes a core issue to be decided by the Court; specifically, "whether the Tribe was lawfully organized and is now properly dominated by the Burley Faction." (*See* Opposition, p.1). Not surprisingly, Plaintiffs' characterization of the current dispute is incorrect. It is undeniable based on the Tribe's almost decade-long history with the United States that the

Tribe's governing body is organized by virtue of its resolution-form-of-government, Resolution #GC-98-01. Plaintiff's cannot provide a single piece of evidence that demonstrates otherwise — despite their attempts to mischaracterize previous litigation involving the Tribe — as said litigation involved efforts organize pursuant to an IRA constitution. (*See* Statement of Points and Authorities In Support of Proposed Intervenor-Defendant's Amended Motion For Leave To Intervene As Defendant, Section II(B), Dkt. No. 35). This fact was reaffirmed by the August 2011 Decision. Rather, Plaintiffs, by their own admission, seek to have this Court enroll a group of non-members into a federally-recognized Tribe. (*See* Plaintiffs' First Amended Complaint for Declaratory and Injunctive relief ("Amended Complaint"), p.30 at ¶ F). This Court has absolutely no jurisdiction to preside over such claims involving issues of internal Tribal self-governance and afford Plaintiffs their requested relief. *See Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978). The Tribe's expedited intervention in this instant action is necessary to defend against and dispose of the outlandish claims set forth in the Amended Complaint, which were also presented and summarily dismissed in administrative proceedings before the Assistant Secretary, Larry Echo Hawk, and the Interior Board of Indian Appeals ("IBIA").

Plaintiffs' continued actions to push first for the Bureau of Indian Affairs ("BIA"), the IBIA, Assistant Secretary, and now a federal court to enroll them as members of this Tribe, has had real and debilitating consequences on the authentic Tribe, demonstrating good cause for expedition of this Court's ruling on its Amended Motion. Plaintiffs' unwarranted challenge to the August 2011 Decision has halted government-to-government relations between the Tribe and the United States, which resumed subsequent to the issuance of the decision issued on December 22, 2010. (*See* Administrative Record, Dkt. No. 33 ("Administrative Record"),

document at Bates No. CVMT-2011-001890-001892 (January 12, 2011 Letter from Troy Burdick to the Tribe)). There are outstanding federal contract monies currently owed to the Tribe, which are necessary for the continuance of the Tribe's authentic governmental operations. (Administrative Record, document at Bates No. CVMT-2011-001941-001996 (March 16, 2011 Letter from Victoria May to the Tribe enclosing approved 638 contract)). It is not surprising that Plaintiffs oppose expedited determination of the Tribe's Amended Motion, as, unlike the Tribe, they have nothing to lose and remain unharmed by delayed resumption of the Tribe's government-to-government relations with the United States. This will remain the case even when the government-to-government relationship resumes as the non-member Plaintiffs *have never* been recognized as being members in, or otherwise having *any* interests in, the Tribe and Plaintiff Dixie's interests would be protected as they currently are in the August 2011 Decision. The Tribe, on the other hand, continues to utilize federal subsidies for the proper functioning of its Tribal government. Moreover, due to the sudden halt in Tribal-Federal relations, the Tribal office in California was foreclosed upon by the bank, jeopardizing the health and safety of the Tribal members with the imminent risk of eviction. Therefore, good cause clearly exists for the Court to exercise its discretion and permit expedited consideration of the Amended Motion. It is absurd for the Plaintiffs to assert otherwise. Further, Plaintiffs' use of the stay contained in the August 2011 Decision of its implementation, pending the resolution of this case, does nothing to support the notion that expedited consideration of the Amended Motion is not warranted here. The stay provides further evidence as to why intervention by the Tribe and the expeditious disposal of this case is necessary in order to bring the Tribe's continued hardships to an end after a struggle spanning over five years.

For the reasons fully set forth in the Tribe's Motion to Expedite Consideration of its Amended Motion for Leave to Intervene as Defendant, and in light of the good case and exigent circumstances that exist for the Tribe's expeditious intervention in and disposal of the instant action, the Tribe respectfully requests that this Court exercise its discretion to manage its docket and achieve the orderly and expeditious disposition of this case.

Respectfully submitted this 9th day of January, 2012.

By: /s/ Robert A. Rosette
Robert A. Rosette
(D.C. Bar No. 457756)
ROSETTE, LLP
565 W. Chandler Boulevard, Suite 212
Chandler, Arizona 85225
Tel: (480) 889-8990
Fax: (480) 889-8997
rosette@rosettela.com

Attorney for Proposed Intervenor,
The California Valley Miwok Tribe

CERTIFICATE OF SERVICE

I certify that on January 9, 2012, I caused a true and correct copy of the foregoing Proposed Intervenor-Defendant's Reply To Plaintiffs' Opposition To Motion To Expedite Consideration of The Tribe's Amended Motion For Leave To Intervene as Defendant to be served on the following counsel via electronic filing:

Kenneth D. Rooney
Trial Attorney
United States Department of Justice
Environment & Natural Resources Division
P.O. Box 663
Washington, DC 20044-0663
Counsel for Defendants

M. Roy Goldberg
Christopher M. Loveland
Sheppard Mullin Richter & Hampton LLP
1300 I Street, N.W., 11th Floor East
Washington, DC 20005-3314
Counsel for Plaintiffs

Robert J. Uram (*admitted pro hac vice*)
Sheppard Mullin Richter & Hampton LLP
Four Embarcadero Center, 17th Floor
San Francisco, California 94111-4109
Counsel for Plaintiffs

/s/ Robert A. Rosette