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, and, CALIFORNIA VALLEY MIWOK TRIBE Defendant-Intervenor	Case No. 1:11-cv-00160-RWR Hon. Richard W. Roberts

FEDERAL DEFENDANTS' MEMORANDUM IN OPPOSITION TO DEFENDANT-INTERVENOR'S MOTION TO DISMISS

IGNACIA S. MORENO
Assistant Attorney General
U.S. Department of Justice, Environment & Natural Resources Division

KENNETH D. ROONEY
Trial Attorney
United States Department of Justice
Environment & Natural Resources Division
Natural Resources Section

OF COUNSEL
James W. Porter
Attorney-Advisor
Branch of General Indian Legal Activities
Division of Indian Affairs
Office of the Solicitor, Department of the Interior

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

Introduction

This litigation concerns a dispute over the Assistant Secretary – Indian Affairs, Department of the Interior's determination that it would no longer compel the organization of the California Valley Miwok Tribe under the Indian Reorganization Act ("IRA"). Plaintiffs (led by Yakima Dixie) challenge the propriety of the August 31, 2011 Decision ("August Decision") by the Bureau of Indian Affairs ("BIA") to recognize the General Council (led by Silvia Burley) as the Tribe. Plaintiffs request this Court vacate and set aside the August 31 Decision, the basic form of relief available under the Administrative Procedure Act ("APA"). *See* Compl. ("Plaintiffs respectfully request that this Court issue an order . . . Vacating and setting aside the August 31 Decision as arbitrary, capricious, unsupported by substantial evidence in the record, an abuse of discretion and otherwise not in accordance with law."). This request is based upon, *inter alia*, challenges to the legal validity of the agency's decision under the APA. The General Council is also a party to this lawsuit, and has now moved to dismiss arguing that the sovereign immunity of the Tribe prevents Plaintiffs' challenge to the administrative decision regarding who the federal government will recognize for purposes of the government-to-government relationship.

Under the facts of this case, dismissal pursuant to Rule 19 is not warranted. Although the Court has held that for purposes of Rule 24 the Federal Defendants and Defendant-Intervenors have different stakes in the outcome of this case, for purposes of Rule 19, the federal government is uniquely situated to defend this administrative decision. Similarly, while Defendant-Intervenors claim this case concerns the adjudication of "internal tribal disputes," what is actually at issue is whether the BIA's recognition of the Defendant-Intervenors as the government for the Tribe was arbitrary and capricious. It is the sole province of the federal

government to determine which entity to recognize for purposes of the government-to-government relationship, and while Defendant-Intervenors may be affected by the outcome of this case, the federal government alone determines who it will recognize as representing the tribal government.

Plaintiffs question whether the federal government correctly determined who the tribal government is; dismissal based on the sovereign immunity of the entity the federal government recognizes as the tribal government would, based upon these particular facts, inappropriately insulate an entire category of the federal government's decisions from judicial review. Indeed, there is no alternative forum for review of the federal government's decision making process.

Procedural Background

On December 22, 2010, the Assistant Secretary issued a decision letter intended to resolve the longstanding dispute between Mr. Dixie and Ms. Burley. Almost immediately, Plaintiffs filed suit and requested injunctive relief. ECF No. 1, 8.[1] "[R]ecognizing the complex and fundamental nature of the underlying issues," the Assistant Secretary withdrew the December decision and requested additional briefing from the parties. April 1, 2011, Withdrawal, AR001998-99; April 8, 2011, request for briefing, AR002004-06.[2]

On April 19, 2011, both Plaintiffs and Federal Defendants requested this Court stay the litigation and all attendant deadlines during the pendency of the Assistant Secretary's

[1] Plaintiffs subsequently withdrew their motion for injunctive relief in light the Assistant Secretary's reconsideration. *See* ECF No. 19.

[2] Among which, were: 1) whether the Secretary has an obligation to ensure that potential tribal members participate in an election to organize the Tribe; 2) the parties' respective positions regarding the status of the Tribe's organization and the Federal Government's duty to assist the Tribe in organizing; and 3) the respective parties' views on what the Secretary's role is in "determining whether a tribe has properly organized itself." Assistant Secretary, April 8, 2011, letter, AR002004.

reconsideration. ECF No. 22. This Court granted the first stay and a subsequent extension until September 2, 2011. ECF No. 24.

On August 31, 2011, the Assistant Secretary issued his reconsidered decision. *See* 2011 Decision, AR002049-57. Based on the materials submitted by Mr. Dixie and Ms. Burley, the litigation records from both the prior federal court actions, and the proceedings before the Interior Board of Indian Appeals, the Assistant Secretary concluded that: 1) The tribe is a federally recognized tribe, and has been continuously recognized by the United States since 1916; 2) at the present date, the citizenship of the Tribe consists solely of Yakima Dixie, Silvia Burley, Rashel Reznor, Anjelica Paulk, and Tristian Wallace; 3) the Tribe operates under a General Council form of government, pursuant to Resolution #GC-98-01, which was passed in 1998; 4) the General Council is vested with the governmental authority of the Tribe, and may conduct the full range of government-to-government relations with the United States; 5) although the General Council form of government does not render the Tribe an "organized tribe" under the IRA, as a federally recognized tribe it is not required to organize in accord with the procedures of the IRA; 6) Under the IRA, as amended, it is impermissible for the federal government to treat tribes not organized under the IRA differently from those organized under the IRA; and 7) with respect to finding number six, the Assistant Secretary "diverge[s] with a key underlying rationale of past decisions . . . and decide[s] to pursue a different policy direction," and finds that "it is inappropriate to invoke the Secretary's broad authority to manage 'all Indian affairs and [] all matters arising out of Indian relations . . . to justify interfering with the [tribe's] internal governance."

Plaintiffs' First Amended Complaint alleges that the Assistant Secretary's August 31 Decision was arbitrary and capricious under the APA, as well as a violation of due process and

the Indian Civil Rights Act ("ICRA"). First Am. Compl. ¶¶ 90-119. Plaintiffs seek declaratory and injunctive relief, including an order vacating the August 31 Decision. *Id.* ¶¶ 82-89.

The tribal government, recognized by the Department per the August Decision, have intervened in the case, and move to dismiss for failure to join a necessary party. *See* ECF No. 35. Their motion sets out four bases for dismissal, but for purposes of opposition, the federal government address only the legal argument that the Tribe is a necessary party under FRCP 19.[3]

Rule 19 Standard

Federal Rule of Civil Procedure 19 governs the joinder of persons required for a suit's adjudication. Under Rule 19, a court must dismiss an action if: (1) an absent party is required, (2)

[3] In addition to dismissal under Rule 19, Defendant-Intervenors allege three other bases for dismissal. Defendant United States finds no merit in the Intervenor's arguments, and therefore cannot support them. Defendant-Intervenors assert that the court lacks jurisdiction, and thus must dismiss the case under Fed. R. Civ. P 12(b)(1) for four reasons. First, Plaintiffs satisfy both constitutional, *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560, (1992); *Sierra Club v. EPA*, 292 F.3d 895, 900 (D.C. Cir. 2002), and prudential standing, *see Hazardous Waste Treatment Council v. U.S. EPA*, 861 F.2d 277, 282 (D.C. Cir. 1988). Although Federal Defendants disagree with the Plaintiffs purported injuries, this Court "must accept that allegation as true for purposes of a Motion to Dismiss," and, as a result, Plaintiffs satisfy both constitutional standing, *Rosales v. U.S.*, 477 F.Supp.2d 119, 126 (D.D.C. 2007); *Feezor v. Babbitt*, 953 F.Supp. 1, 4 (D.D.C.1996), and their interests "plainly fall within the zone of interests that the IRA was designed to protect."*Timbisha Shoshone Tribe v. Salazar*, 766 F.Supp.2d 175, 183 (D.D.C. 2011). Second, they assert that the AS-IA decision of August 31 establishes the membership of the Tribe "once and for all." Since that agency action is the subject of the APA challenge in this case, it cannot be invoked in support of the conclusions it reached; the court cannot dismiss a lawsuit challenging an agency action in reliance on the correctness of that action.

Third, Defendant-Intervenors assert that the dispute is an internal tribal matter over which the court cannot exercise jurisdiction. This argument ignores the fact that the complaint sets out a challenge under the APA to a final agency action. Whatever limitations there may be on the scope of relief that the court can order, vacating the AS-IA's August 31 order is well within those limitations.

Finally, Intervenors assert that the complaint fails to state a claim upon which relief can be granted. In fact, the complaint asserts that the August 31, 2011, decision is a final agency action that violated the APA; the court can grant the requested relief of finding the decision to be "arbitrary, capricious, unsupported by substantial evidence in the record, an abuse of discretion and otherwise not in accordance with law," and vacating that decision.

Intervenor's invocation of Fed. R. Civ. P. 19 is the only basis for dismissal meriting discussion.

it is not feasible to join the absent party, and (3) it is determined "in equity and good conscience" that the action should not proceed among the existing parties. *Republic of Philippines v. Pimentel*, 553 U.S. 851, 862 128 S. Ct. 2180, 2188 (2008); *Vann v. Salazar*, slip op., 2011 WL 4953030 (September 30, 2011, D.D.C. 2011).[4]

Rule 19 establishes a two step procedure for determining whether an action must be dismissed because of the absence of a required party. *See Cherokee Nation of Oklahoma v. Babbitt*, 117 F.3d 1489, 1495 (D.C. Cir. 1997). First, the court must determine whether the absent party is a required party according to the factors enumerated in Rule 19(a). Under Rule 19(a)(1) a person is required if (A) "in that person's absence, the court cannot accord complete relief among existing parties; or (B), the person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may: (i) as a practical matter impair or impede the person's ability to protect the interest, or (ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest." Fed.R.Civ.P. 19(a)(1). If a tribe satisfies either test, it is a required party under Rule 19.

If the required party cannot be joined, then the court must turn to the second step and examine the equitable factors included in Rule 19(b). Rule 19(b) provides that if a required party cannot be joined, the court must determine whether in equity and good conscience the action

[4] Rule 19 was amended in 2007. See Fed. R. Civ. P. 19, 28 U.S.C.A., p. 168 (2008). The word "required" replaced the word "necessary" in 19(a), and the word "indispensable" was deleted altogether. Id. ("'Indispensable' was used only to express a conclusion reached by applying the tests of Rule 19(b). It has been discarded as redundant."). As a result, the words "necessary" and "indispensable" "have become obsolete in the Rule 19 context as a result of stylistic changes to the Rule that have occurred since the proceedings in the district court." *Vann v. Kempthorne*, 534 F.3d 741, 745n.1 (D.C. Cir. 2008); *see also Republic of Philippines*, 552 U.S. at 856-57 (observing that these changes were "stylistic" only, and the Rule 19 analysis remains the same as before the amendment.).

should proceed among the parties before it or should be dismissed. Rule 19(b). In making this determination, the factors to be considered by the court are the following:

> If a person who is required to be joined if feasible cannot be joined, the court must determine whether, in equity and good conscience, the action should proceed among the existing parties or should be dismissed. The factors for the court to consider include:
>
> (1) the extent to which a judgment rendered in the person's absence might prejudice that person or the existing parties;
>
> (2) the extent to which any prejudice could be lessened or avoided by:
>
> (A) protective provisions in the judgment;
> (B) shaping the relief; or
> (C) other measures;
>
> (3) whether a judgment rendered in the person's absence would be adequate; and
>
> (4) whether the plaintiff would have an adequate remedy if the action were dismissed for nonjoinder.

Rule 19(b).

ARGUMENT

I. DISMISSAL PURSUANT TO FEDERAL RULE OF PROCEDURE 19 IS NOT WARRANTED HERE WHERE PLAINTIFFS PROPERLY CHALLENGE THE PROPRIETY OF AGENCY DECISIONMAKING UNDER THE ADMINISTRATIVE PROCEDURE ACT.

A. The presence of Defendant-Intervenors is not required where the federal government is defending a final agency action and there is no conflict of interest.

The first consideration under 19(a) is whether, in the absence of the Defendant-Intervenor, complete relief can be accorded as between the persons already parties. The final decisions of the Assistant Secretary are subject to judicial review under the APA. *See Cal. Valley Miwok Tribe v. United States*, 515 F.3d 1262, 1267 (D.C. Cir. 2008); *Cal. Valley Miwok Tribe v. United States*, 424 F.Supp.2d 197, 203 n.7 (D.D.C. 2006). If Plaintiffs' succeed in their APA challenge, the result would be vacatur of the August 31 decision and remand to the Assistant

Secretary for further deliberation and a new decision. *See American Bioscience, Inc. v. Thompson*, 269 F.3d 1077, 1084 (D.C.Cir.2001) (observing that vacatur of an agency's order is the normal remedy for a violation of the APA). Under these particular circumstances, then, Plaintiffs could obtain all the relief to which they would be entitled without the Defendant-Intervenor's presence as a party. *See e.g., Sac and Fox Nation of Missouri v. Norton*, 240 F.3d 1250 (10th Cir. 2001) (reversing the district court's dismissal of the lawsuit pursuant to Rule 19, and evaluating the various APA challenges on the merits); *Makah Indian Tribe v. Verity*, 910 F.2d 555, 559 (9th Cir. 1990) (concluding that complete relief could be accorded the parties because the complaint challenged the procedures the Secretary followed in promulgating the challenged regulations, which constituted actions subject to judicial review under the APA).

The second consideration under Rule 19(a)(1)(B)(I) is whether the Tribe claims an interest relating to the subject of the action, and, if so, whether resolution of the claims in the suit will impair or impede that legally protected interest, or, conversely, whether the federal government can adequately represent the Defendant-Intervenor's interest. *See Ramah Navajo School Bd., Inc. v. Babbitt*, 87 F.3d 1338, 1352 (D.C. Cir. 1996) (citing *Cassidy v. United States*, 875 F.Supp. 1438, 1445 (E.D.Wash.1994), for the proposition that "nonparty Tribes not necessary where the United States would have the court construe the law in essentially the same fashion as the Tribes and therefore the United States can adequately represent the Tribes' interest."). Although a tribe may claim a legally protected interest, the United States can adequately represent the non-party tribe so long as there is no conflict of interest between the United States and the tribe. *Wichita & Affiliated Tribes v. Hodel*, 788 F.2d 765, 775 (D.C.Cir.1986) (stating that "when 'there is a conflict between the interests of the United States and the interests of Indians, representation of the Indians by the United States is not adequate'").

The fact that Defendant-Intervenors may feel the effect of a judgment does not in and of itself rise to the level of an interest for purposes of Rule 19. *Wichita and Affiliated Tribes of Oklahoma*, 788 F.2d at 771-772.

A recent case arising in the Southern District of California provides a similar situation where the court allowed the APA claims to proceed despite the absence of the tribe. In *Alto et al. v. Salazar et al*, Civ. No. 3:11-cv-2276, ECF No. 24 (S.D. Cal. Filed September 30, 2011) (Exhibit 1), plaintiffs, a group of individual tribal members, brought suit challenging the Assistant Secretary's determination that plaintiffs' names should be removed from the membership roll of the San Pasqual Band. Plaintiffs brought suit under the APA and the Fifth Amendment, contending that the challenged agency action was arbitrary and capricious action and in violation of their due process rights. The non-party tribe was granted leave to file an amicus brief for the express purpose of moving for dismissal pursuant to Rule 19. In its motion to dismiss, the non-party tribe argued that, at its core, the action constituted an internal tribal membership dispute that turned on the interpretation of membership criteria incorporated within the tribe's constitution. The court, however, disagreed, and subsequently denied the non-party tribe's motion, concluding, *inter alia*, that the non party tribe did not have a legally protected interest that would be impaired in its absence, because the sole focus of the inquiry was the propriety of the agency's actions pursuant to the APA. *Id.* at 24-25. Thus, the court concluded that the federal government could adequately represent the non-party tribe because the sole inquiry was whether the final agency action could satisfy the strictures of the APA. *Id.*

As in *Alto*, where the official policies and decisions of the Department are challenged, no one is better situated to defend those positions than the very governmental entity that issued the decision. *See also Makah Indian Tribe*, 910 F.2d at 559 (concluding that other tribes were not

necessary parties to the Makah Indian Tribe's complaint seeking review of the Secretary's promulgation of regulations and prospective injunctive relief, where the procedures the Secretary followed in promulgating the challenged regulations were subject to judicial review under the APA); *see also Ransom v. Babbitt*, 69 F. Supp. 2d 141, 148 (D.D.C. 1999). The federal government does, in fact, share Defendant-Intervenor's "distinct and weighty interest in protecting its current governmental structure and its ability to define its membership independently." ECF No. 52, Order at 14. Indeed, one of the purposes of the August 31 Decision was to encourage tribal governmental autonomy and self determination by deferring once again to the General Council to make membership determinations. *See* Def.' Cross Motion, 13-28. Importantly, though, the decision does not definitively accord membership to any individuals, but instead directs "potential citizens, if they so desire, [to] take up their cause with the CVMT General Council directly." AR 2055.

What the decision also does, though, is affirm the government-to-government relationship with the Tribal Council. August 31 Decision, AR002056. The struggle for control of the tribe has at various times threatened to impair the government-to-government relationship between the tribe and the United States; the Assistant Secretary's decision to continue working with the General Council, *see id.* at AR002049, 2055-56, properly conforms with the longstanding principle that "where the federal government must decide what tribal entity to recognize as the government, it must do so in harmony with the principles of tribal self-determination." *Ransom v. Babbitt*, 69 F. Supp. 2d 141, 150 (D.D.C. 1999) (citing *Wheeler v. U.S. Dep't. of Interior*, 811 F.2d 549, 551 (10th Cir.1987)). This recognition of tribal self-determination does not transform the decision into one exclusively regarding internal tribal

matters; quite to the contrary, the federal government's conscious policy choice not to compel any further tribal organization under the IRA is directly reviewable pursuant to the APA.

Moreover, another question implicated by the August 31 Decision is whether the Assistant Secretary acted reasonably in dealing with a particular governing body of the Tribe. *See Goodface v. Grassrope*, 708 F.2d 335, 339 (8th Cir. 1983). A question that concerns the actions of the federal government, not Defendant-Intervenors, and that final agency action must ultimately be measured against the backdrop of the APA and the Assistant Secretary's power to manage "all Indian affairs and [ ] all matters arising out of Indian relations." 25 U.S.C. § 2. As the D.C. Circuit observed in *Miwok II*, "[w]e have previously held that this extensive grant of authority gives the Secretary broad power to carry out the federal government's unique responsibilities with respect to Indians." 515 F.3d at 1267 (citing *Udall v. Littell*, 366 F.2d 668, 672 (D.C.Cir.1966) ("In charging the Secretary with broad responsibility for the welfare of Indian tribes, Congress must be assumed to have given him reasonable powers to discharge it effectively.").

Finally, although the Defendant Intervenors and the Federal Government may disagree on procedural tactics, the federal government's "decision not to support the [non-party] tribe's motion to dismiss does not support a finding that the [non-party] tribe is a necessary party." *Sw. Ctr. For Biological Diversity v. Babbitt*, 150 F.3d 1152, 1154 (9th Cir. 1998) (rejecting the district court's conclusion that the government would not adequately represent the tribe's interest because the government did not support the motion to dismiss the suit under Rule 19, and observing that such an approach "would also create a serious risk that non-parties clothed with sovereign immunity, such as the [Tribe], whose interests in the underlying merits are adequately represented could defeat meritorious suits simply because the existing parties representing their

interest opposed their motion to dismiss."); Ex. 1 at 25 (rejecting plaintiffs' argument that the federal government's opposition to a motion to dismiss on Rule 19 grounds demonstrates inadequacy).

B. Even Assuming the Defendant-Intervenor Tribe is required, the action should proceed among the existing parties.

Should this Court determine that the Tribe is required under 19(a), the Court's inquiry would then turn to the balancing of the four equitable factors listed in 19(b). *See supra* Section I; *see also W. Md. Ry. Co. v. Harbor Ins. Co.*, 910 F.2d 960, 961 (D.C. Cir. 1990); *see, e.g., United States v. Bowen*, 172 F.3d 682, 688 (9th Cir 1999); *Dawavendewa v. Salt River Project Agric. Improvement & Power Dist.*, 276 F.3d 1150, 1155 (9th Cir. 2002); *Citizen Potawatomi Nation v. Norton*, 248 F.3d 993, 997 (10th Cir. 2001); *Keweenaw Bay Indian Cmty. v. Michigan*, 11 F.3d 1341, 1345 (6th Cir. 1993). If the absent party is required but cannot be joined, the Court must dismiss the suit. *See, e.g., Provident Tradesmen Bank & Trust Co. v. Patterson*, 390 U.S. 102, 118-19 (1968); *Viacom Int'l, v. Kearney*, 212 F.3d 721, 725 (2nd Cir. 2000); *Davis v. United States*, 192 F.3d 951, 959 (10th Cir. 1999).

These four factors are not rigid, technical tests, but rather "guides to the overarching 'equity and good conscience' determination." *Cloverleaf Standardbred Owners Ass'n, Inc. v. National Bank*, 669 F.2d 1274 , 1279 n.11 (D.C. Cir. 1983). While a sovereign Indian tribe's sovereign immunity weighs in favor of dismissal, *Wichita and Affiliated Tribes of Oklahoma v. Hodel*, 788 F.2d 765, 776 (D.C. Cir. 1986), applying these factors here, however, compels the conclusion that the absent Tribe is not a required party in this suit.

While it is true the Defendant-Intervenor has an interest in the affirmation of the Assistant Secretary's decision, the potential prejudice to that interest is "offset in large part by the fact that the Secretary's interests in defending his decisions are substantially similar, if not

virtually identical," to the Defendant-Intervenors. *Sac and Fox*, 240 F.3d at 1260; *supra*, Section IA. And because suit is brought pursuant to the APA, the Defendant-Intervenor's absence would not deprive Plaintiffs of the full relief available under the APA: Vacatur of the August Decision and remand to the Assistant Secretary. Indeed, the third factor militates against dismissal because there exists a "public stake in settling disputes by wholes, whenever possible," which reflects the "social interest in the efficient administration of justice and the avoidance of multiple litigation." *Republic of Philippines*, 553 U.S. at 870 (internal quotation marks omitted). Finally, while the doctrine of tribal immunity "reflects a societal decision that tribal autonomy predominates over other interests," *Wichita*, 788 F.2d at 781, pursuant to the APA, *see* 5 U.S.C. § 702, Congress has expressly waived the United States' sovereign immunity and authorized judicial review for the narrow purpose of evaluating the federal government's administrative processes. *See Makah Indian Tribe*, 910 F.2d at 559; *Sac and Fox Nation of Missouri v. Norton*, 240 F.3d at 1259-60; *Sw. Ctr. For Biological Diversity v. Babbitt*, 150 F.3d at 1154-55; *Ransom*, 69 F.Supp.2d at 148.

CONCLUSION

Under the APA, any person adversely affected by agency action may seek review. Plaintiffs are one such party, despite the federal government's disagreement with a number of keystone assertions that Plaintiffs' Complaint hinges upon. To the extent Plaintiffs seek judicial review under the APA, those claims are reasonably susceptible to adjudication without the presence of the Defendant-Intervenor.[5]

[5] To the extent Plaintiffs seek non-APA relief that would directly impact the interests of the Defendant-Intervenors, dismissal of those claims is warranted pursuant to Rule 19. *See e.g.*, Makah, 910 F.2d at 559 (allowing the claims brought under the APA to proceed as "reasonably susceptible to adjudication without the presence of the tribes," but affirming the district court's dismissal of claims requesting the reallocation of a tribe's harvest, noting that the scope of relief was narrow and that none of plaintiffs "other requests for relief would be appropriately considered in the absence of other tribes.").

IGNACIA S. MORENO
Assistant Attorney General

/s/ Kenneth D. Rooney
KENNETH D. ROONEY
Trial Attorney
United States Department of Justice
Environment and Natural Resources Division
Natural Resources Section
P.O. Box 7611
Washington, D.C. 20044
Phone: (202) 514-9269
Fax: (202) 305-0506
E-mail: kenneth.rooney@usdoj.gov

OF COUNSEL
James W. Porter
Attorney-Advisor
Branch of General Indian Legal Activities
Division of Indian Affairs
Office of the Solicitor, Department of the Interior
1849 C Street, N.W. Washington, D.C. 20240
Mail stop 6518
202-208-5349 (phone)
202-208-4115 (fax)
James.Porter@sol.doi.gov

CERTIFICATE OF SERVICE

I certify that on April 20th, 2012, I caused to be filed a copy of the foregoing Federal Defendants' Memorandum in Opposition to Defendant-Intervenor's Motion to Dismiss 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/
Kenneth Rooney