

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

CALIFORNIA VALLEY MIWOK TRIBE,  
et al.,

Plaintiffs,

v.

KEN SALAZAR, et al.,

Defendants.

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

Hon. Barbara Jacobs Rothstein

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**STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF INTERVENOR  
DEFENDANT’S MOTION TO EXPEDITE CONSIDERATION OF ITS MOTION TO  
DISMISS PLAINTIFFS’ FIRST AMENDED COMPLAINT FOR DECLARATORY AND  
INJUNCTIVE RELIEF**

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**I. INTRODUCTION**

Pursuant to 28 U.S.C. § 1657, Intervenor-Defendant, the California Valley Miwok Tribe (“Tribe”), a federally-recognized Indian tribe, respectfully submits the following statement of points and authorities for the purpose of seeking expedited consideration of the Tribe’s Motion to Dismiss Plaintiffs’ First Amended Complaint for Declaratory and Injunctive Relief (“Motion to Dismiss”), filed over one year ago on March 26, 2012 (Dkt. No. 56) (subsequent to this Court granting the Tribe’s request to intervene as a Defendant in this action) and fully briefed as of April 27, 2012 (Dkt. No. 64). On April 15, 2013, the instant action was reassigned by consent to the Honorable Judge Barbara Jacobs Rothstein (Dkt. No. 70). As set forth below, expedited determination of the Tribe’s Motion to Dismiss is both necessary and appropriate in this instance because such action is well within this Court’s discretion upon the Tribe’s showing of good

cause and because the Court may promptly consider the Tribe's Motion in the interests of judicial economy and to prevent the Tribe from suffering further hardships.

The instant action was first filed on January 24, 2011 – over two years ago – to challenge a final agency action of the Assistant Secretary - Indian Affairs (“AS-IA”) dated December 22, 2010 (“2010 Decision”) that recognized the legitimate composition of the Tribe’s government and citizenship, pursuant to Tribal law (Dkt. No. 1). In response to the filing, the AS-IA, withdrew the 2010 Decision and requested parties to file briefs for even further and exhaustive consideration of all arguments (Dkt No. 22). After lengthy consideration of supplemental briefing by both parties, on August 31, 2011 the AS-IA, by a new final determination, recognized the Intervenor-Defendant as the only and true Tribe, comprised of a well-established government and recognized citizenship (“2011 Decision”). In the 2011 Decision, the AS-IA provides, “[t]his decision is final . . . and effective immediately, but implementation shall be stayed pending resolution of [the instant case].” Although the final decision has been made by the Department of the Interior - on not one but two occasions - to recognize the Tribe’s form of government and citizenship, the Tribe is still unable to exercise the multiple rights granted to it under Title 25 of the United States Code. As stated above, the Tribe’s Motion to Dismiss was fully briefed over one year ago, on April 27, 2012 (Dkt No. 64). ***There is no better instance where the need for expedited consideration is more real; an entire tribal government and all of the federal statutory rights it enjoys in a government-to-government relationship with the United States has been put on hold until a ruling is made on this case and the pending Motion to Dismiss.***

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## II. ARGUMENT

The federal judiciary vests the district courts with the authority to manage their own dockets and calendars. *See Link v. Wabash Railroad Co.*, 370 U.S. 626, 630-31 (1962) (federal courts have the necessary inherent powers to “manage their own affairs so as to achieve the orderly and expeditious disposition of cases”); *Landis v. N. American Co.*, 299 U.S. 248, 254-55 (1936) (these inherent powers include controlling “the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.”). Pursuant to 28 U.S.C. § 1657, this authority includes expedited consideration “if good cause therefore is shown.”

The statute maintains that a showing of good cause may be made “if a right under the Constitution of the United States or a Federal Statute . . . would be maintained in a factual context that indicates that a request for expedited consideration has merit.” 28 U.S.C. § 1657. The Tribe brings forth this motion to expedite consideration of the Motion to Dismiss in order to maintain the rights granted to the Tribe under multiple statutes contained in Title 25 of the United States Code, which are guaranteed to federally recognized tribes under the federal trust responsibility doctrine and granted by Congressional authority. Because the Tribe’s rights to benefits under Title 25 have been, in essence, terminated pending the outcome of this litigation, it has suffered and will continue to suffer irreparable harm for each and every day that this action is pending. As such and for the reasons set forth below, good cause exists and expedited consideration of the Tribe’s Motion to Dismiss is both necessary and appropriate.

### A. Good Cause Exists Pursuant to the Federal Trust Doctrine

The federal government has historically recognized a federal trust responsibility owed to federally-recognized Indian tribes. *See Cherokee Nation v. Georgia*, 30 U.S. 1, 2 (1831) (“[Tribal] relations to the United States resemble that of a ward to his guardian.”); *United States*

*v. Sandoval*, 231 U.S. 28, 46 (1913) (“[A]n unbroken current of judicial decisions have attributed to the United States as a superior and civilized nation the power and the duty of exercising a fostering care and protection over all dependent Indian communities within its border . . .”) The courts of these United States have time after time ensured this trust responsibility is met by the Executive and Legislative Branches by enforcing the trust responsibility through judicial order.

With regard to the instant action, United States federal case precedent provides that the federal courts should grant deference to the Secretary of the Interior in matters where the United States’ and tribal government to government relationships are at issue. *See Pierre v. Norton*, 498 F.Supp. 2d 214 (D.C. Cir 2007); *Smith v. Babbitt*, 875 F.Supp.1353 (D.Minn.1995). Indeed, federal courts, including this Court, have recognized the importance of timely resolution of tribal governance and membership disputes, brought vis-à-vis APA challenge to final agency action of the AS-IA, in order to ensure that the government to government relationships between federally-recognized tribes and the United States are not disrupted. (*See, e.g., Timbisha Shoshone Tribe, et al., v. Salazar, et al.*, 678 F.3d 935, 938 (D.C. Cir. 2012) (holding that individual tribal members lacked standing to sue on behalf of that tribe because the court owed “deference to the judgment of the Executive Branch as to who represents the tribe.”); *See also, Timbisha Shoshone Tribe, et al. v. U.S. Department of the Interior, et al.*, No. 2:11-cv-00995, 2013 WL 1451360 (ED CA, April 9, 2013) (holding that tribal faction was barred from challenging AS-IA final agency action regarding composition of the tribal government because the intervenor-defendant tribe was not and could not be made a party to the action, pursuant to Rule 19).

As properly concluded in the 2011 Decision, the Intervenor-Defendant is the **only** federally-recognized Indian tribe known as the California Valley Miwok Tribe, as recognized on not one, but **two** separate occasions by the Executive Branch through two final agency actions.

In this case, it is not the failure of the Executive Branch to recognize the Tribe that currently prevents the Tribe from exercising their recognized sovereign rights. Rather, they are the “stay” language contained in the 2011 Decision, coupled with the lack of movement toward resolution of the instant action, that are preventing the United States from fulfilling the codified trust obligations owed to the Tribe. Accordingly, the Tribe petitions this Court to expedite its ruling on the pending Motion to Dismiss in order to enforce the federal trust responsibility owed to the Tribe and to resume the long-halted government to government relationship between the Tribe and the United States.

**B. Good Cause Exists Under Federal Law To Expedite Intervenor-Defendant’s Motion To Dismiss.**

The federal trust responsibility owed to Indian tribes, as set forth above, has not only been established via judicial precedent, but also pursuant to Congressional authority and federal legislation. Among the statutory grants of tribal rights are those afforded pursuant to Title 25 of the United States Code, which includes: the Indian Self-Determination and Education Assistance Act (ISDEAA) (25 U.S.C. §450, *et seq.*), the Native American Graves Protection and Repatriation Act (NAGPRA) (25 U.S.C. §3001, *et seq.*), Indian Health Services (IHS) (25 U.S.C. §1601, *et seq.*), Native American Housing Assistance and Self-Determination Act (NAHASDA) (25 U.S.C. §4101, *et seq.*), and many more programs that fund tribal governments for the benefit of tribal members.

The inability of the Tribe to access federal funds afforded pursuant to federal statute – funds upon which the Tribe relies almost exclusively for operation of its Tribal government - has had very tangible and debilitating consequences on the Tribe, further demonstrating good cause for expedition of this court’s ruling on the Tribe’s Motion to Dismiss. (*See Declaration of Silvia Burley in Support of Intervenor-Defendant’s Motion to Expedite Consideration of its*

Motion to Dismiss Plaintiffs' Amended Complaint, filed concurrently herewith ("Burley Dec.")). By way of example only, the Tribal government currently lacks funds for basic governmental services, including education, fire service, tribal office supplies, tribal security, waste management, electricity, water services, tribal transportation, tribal housing and repairs, tribal social services, telecommunications, waste management, job training, child care services, and Tribal Indian Child Welfare services. (Burley Dec., ¶ 5). Moreover, the cessation of state and federal funding has resulted in the Tribal offices falling into foreclosure, making imminent the possibility of homelessness for the Tribe's citizens. (Burley Dec., ¶ 6). Most significantly, lack of federal funding has stripped the Tribe's ability to provide any health care benefits to its citizens, forcing Tribal citizens with serious medical conditions to forego surgery, medications, and other basic medical needs due the inability to access funding afforded to all federally-recognized Indian tribes by Congress for these very necessities. (Burley Dec., ¶ 9). Finally, the lack of federal funding has had a personal impact on the Tribal citizens, leaving many without jobs due to termination of Tribal governmental positions, and forcing them to sell personal belongings just to assist in funding Tribal governmental operations. (Burley Dec., ¶¶ 7-8, 14).

In addition, not only have the Tribe's federal grant funds been halted pending resolution of the instant action, but so has its ability to challenge previously withheld federal monies in fiscal years 2010 and 2011. (*See* Declaration of Saba Bazzazieh in Support of Motion to Expedite Consideration of the Intervenor-Defendant's Motion to Dismiss Plaintiffs' First Amended Complaint ("Bazzazieh Dec."), ¶ 4). Thus, so long as this action remains unresolved, the government to government relationship ensured by federal statute and the accompanying health care and other vital services afforded to the Tribe will continue to be withheld, resulting in debilitating and irreparable harm to the Tribe and its citizens.

In addition to federal funding, the Tribe's ability to access monies granted by the state of California have also been halted pending resolution of the instant action. As a federally-recognized, "Non-Compact," Indian tribe located in the state of California, the Tribe is an eligible recipient of the Revenue Sharing Trust Fund monies administered by the California Gambling Control Commission ("CGCC"), a state agency which serves as trustee of these funds for eligible California tribes (*See Bazzazieh Dec.*, ¶ 3). In 2008, the Tribe initiated action in California state court against the CGCC for improperly withholding the RSTF funds from the Tribe since 2005, as a result of its internal governance dispute. (*See California Valley Miwok Tribe v. The California Gambling Control Commission*, 37-2008-00075326-CU-CO-CTL) (*See Bazzazieh Dec.*, ¶ 4). On April 26 2013, after two successful rulings from the California Court of Appeals, the court in this action ruled against the Tribe and granted the CGCC's motion for summary judgment, *solely* due to the fact that a final ruling has not yet been issued in this matter (*See Bazzazieh Dec.* ¶5, Exhibit B thereto)("the court finds that, because the [D.C. action] is still pending...the Commission is justified in withholding the RSTF funds"). Consequently, the Tribe is now left with *no recourse* in any venue, except for the instant action, to attempt to retrieve either its federal or state monies to which it is entitled and had previously and appropriately received.

As previously recognized by this Court, the Intervenor-Defendant "*possesses a distinct and weighty interest in protecting its governance structure and its entitlement and access to federal grant monies.*" (*See Memorandum Opinion and Order*, Dkt. 52, p.12, emphasis added). As set forth above, these interests are currently being harmed due to the length of time that has passed to consider the Tribe's Motion to Dismiss and bring final resolution to this matter. Accordingly, good cause clearly exists for the court to exercise its discretion and permit

expedited consideration of the Tribe's Motion to Dismiss. Only through expedited consideration of the pending Motion to Dismiss and resolution of the instant action can long-overdue federal and state funds - which are absolutely *critical* to the continuing operation of the Tribal government the provision of resources to Tribal members –finally be resumed to the Tribe.

### III. CONCLUSION

For all of the foregoing reasons, good cause exists pursuant to 28 U.S.C. § 1657 for this Court to exercise its discretion to achieve the orderly and expeditious disposition of this case. As such, the Tribe respectfully requests that the Court grant expedited consideration of its Motion to Dismiss to ensure that the Tribe's federal rights guaranteed under the federal trust doctrine and granted by virtue of Congressional authority are not unjustly withheld.

Respectfully submitted this 5<sup>th</sup> day of July, 2013.

By: /s/ Robert A. Rosette  
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**CERTIFICATE OF SERVICE**

I certify that on July 5, 2013, I caused a true and correct copy of the foregoing Motion To Expedite Consideration of the Intervenor-Defendant's Motion To Dismiss Plaintiffs' First Amended Complaint For Declaratory and Injunctive Relief, the Supporting Statement of Points and Authorities, the Declaration of Saba Bazzazieh in Support Thereof, the Declaration of Silvia Burley in Support Thereof, and a proposed Order to be served on the following counsel via electronic filing:

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