

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

CALIFORNIA VALLEY MIWOK TRIBE,
et al,

Plaintiffs,

v.

KEN SALAZAR, et al,

Defendants,

and,

CALIFORNIA VALLEY MIWOK TRIBE,

Intervenor-Defendant.

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

**INTERVENOR-DEFENDANT'S REPLY IN SUPPORT OF ITS MOTION FOR
RECONSIDERATION OF THE COURT'S ORDER, DATED SEPTEMBER 6, 2013
(DKT. NOS 78 and 81)**

I. INTRODUCTION

Intervenor-Defendant, the California Valley Miwok Tribe (“Tribe”), respectfully submits the following reply in support of its Motion for Reconsideration (“Motion,” Dkt. 78) of this Court’s order, dated September 6, 2013 (“Order,” Dkt. 76, 77), and to address the Federal Defendants’ response to the Motion filed on October 1, 2013 (“Response,” Dkt 81). As set forth below, the Response fundamentally misstates the basis upon which the Tribe seeks reconsideration of the Order. Moreover, the Federal Defendants’ critique of the Tribe’s position is directly contrary to the very arguments made and positions taken by the Federal Defendants in their defense of the August 2011 Decision¹ on the merits. Therefore, because the issues raised in the Response do not – and cannot – undermine the validity of the arguments raised in the Tribe’s Motion, the Tribe respectfully requests that the Court grant its Motion and reconsider its prior Order.

II. ARGUMENT

Putting aside the many compelling arguments raised in the Tribe’s Motion – and to which the Federal Defendants made no objection or otherwise did not respond² – the Response focuses solely on an argument that was not raised in the Tribe’s Motion and is therefore irrelevant to the arguments that were raised. In its Motion, the Tribe contends that this Court committed a fundamental error of apprehension in proceeding on the ill-fated and unsupported assumption that, prior to the issuance of the August 2011 Decision, the United States never recognized the Tribe as having an “organized” government and, as such, the Tribe currently lacked the same. In their Response, the Federal Defendants misconstrue the Tribe’s argument pertaining to the United States’ prior recognition of its resolution form of government, under Resolution GC #98-01, as an unaided grievance pertaining to the Tribe’s federally-recognized status. It is undisputed – and no party hereto has ever contested at any point during these proceedings nor in proceedings

¹ Capitalized terms appear as defined in the Tribe’s Motion for Reconsideration (Dkt. No. 78).

² Those arguments include, but are not limited to, this Court’s patent misunderstanding of the identity of the parties in its standing analysis, as well as its consideration of information wholly-unsupported by the administrative record.

held at the administrative level – that the Tribe is a federally-recognized Indian tribe. After over eight (8) years of proceedings at the administrative level – and more recently before this Court – surely the Federal Defendants must recognize the Tribe’s intimate familiarity with the issues involved in this case.

Fundamentally, federal recognition of an Indian tribe’s status for purposes of determining eligibility for federal benefits is wholly-distinct from the United States’ recognition of a tribe’s form of government for purposes of maintaining a government-to-government relationship with which it may administer such benefits. In this instance, neither issue can genuinely be contested, as the record is abundantly clear. Despite the Federal Defendants’ contention that the Tribe’s resolution form of government “was not previously recognized as the tribal government...prior to issuance of [the August 2011 Decision],” Federal Defendants’ own arguments in support of the merits of the August 2011 Decision demonstrate otherwise. (Response at 3). The basis of the Tribe’s Motion is the very position furthered by the Federal Defendants – that the Plaintiffs and this Court “cannot ignore the uncomfortable reality that the Assistant Secretary has recognized the General Council, of which Mr. Dixie is a member, on numerous occasions throughout the past 14 years.” (Federal Defendants’ Cross-Motion for Summary Judgment at 28).³ Surely, neither the Federal Defendants nor the Plaintiffs can champion the argument – nor can the Court conclude – that the United States has never recognized a Tribal government pursuant to Resolution #GC-98-01 prior to the August 2011 Decision when the record *overwhelmingly* demonstrates otherwise. (*See, e.g.*, AR 208-209; AR 254; AR 261; AR 356; AR 260-62; and AR 1455). It is abundantly clear from the record that the August 2011 Decision constituted a *reaffirmation* of the validity of the Tribe’s government under Resolution #GC-98-01 and a *resumption* of this government’s relationship with the United States for purposes of administering federal benefits. (*See* Federal Defendants’ Reply in Support of Motion for Summary Judgment at 13, 15).

³ “Indeed, throughout the years, the Department has entered into ten 638 contracts with the Tribe and the General Council.” *Id.* (citing to AR 001454; AR000855; AR000856; AR 0001519-20).

An Indian tribe's sovereign status is not stripped by virtue of a pause in the government to government relationship with the United States and discontinuation of federal benefits. Indeed, inherent tribal sovereignty has been recognized to include an Indian tribe's right to enact its own laws and be governed by them. *See Williams v. Lee*, 358 U.S. 217 (1959). This Tribe exercised its sovereign rights in 1998 by enacting Resolution GC #98-01 and delineating specific and enumerated powers to the General Council in the governance of the Tribe. (AR 177-179). The United States has recognized and deferred to the Tribe's sovereign rights and its effort to govern itself by its laws for over ten (10) years. (*See supra*).⁴ Therefore, this Court cannot rely on the misguided proposition that this Tribe lacked a functioning government prior to the August 2011 Decision as the basis for its determination that (a) it retains subject matter jurisdiction over this action, (b) it can afford relief to the Plaintiffs pursuant to Fed. R. Civ. P 12(b)(6) and (c) the Tribe lacks the ability to assert sovereign immunity as a necessary and indispensable party pursuant to Fed. R. Civ. P. 19. As a result, justice requires reconsideration of the Order as it is clearly "necessary under the relevant circumstances." *Cobell v. Norton*, 224 F.R.D. 266, 272 (D.D.C. 2004).

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⁴ Federal Defendants state that the August 2011 Decision "marked the resumption of government-to-government relations with a tribal government, not Mr. Dixie's faction nor Ms. Burley's faction." Response at 3. However, it is important to note that the tribal government identified by the United States is the same group labeled as the "Burley faction," which is comprised of the only four Tribal members ever recognized by the federal government. "Mr. Dixie's faction," on the other hand, is comprised of a sole Tribal member, Yakima Dixie, along with numerous individuals who currently seek membership in an Indian tribe, but who have never once – in the history of the Tribe – been recognized as Tribal citizens. This distinction is critical and must be recognized by the Court.

III. CONCLUSION

For the reasons set forth above and detailed in the Motion, the Tribe respectfully requests that this Court grant reconsideration of its Order denying the Motion to Dismiss Plaintiffs' Amended Complaint.

Dated: October 8, 2013

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on October 8, 2012, I caused a true and correct copy of the foregoing **INTERVENOR-DEFENDANT'S REPLY IN SUPPORT OF ITS MOTION FOR RECONSIDERATION OF THE COURT'S ORDER, DATED SEPTEMBER 6, 2013 (DKT. NOS 78 and 81)** to be served on the following counsel via electronic filing:

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