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

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| **THE CALIFORNIA VALLEY MIWOK TRIBE, et al.,**<br><br>**Plaintiffs,**<br><br>**v.**<br><br>**SALLY JEWELL, in her official capacity as Secretary of the United States Department of the Interior, et al.,**<br><br>**Defendants,**<br><br>**and,**<br><br>**CALIFORNIA VALLEY MIWOK TRIBE**<br><br>**Defendant-Intervenor.** | **Civil Action No. 11-CV-00160 (BJR)**<br><br>**ORDER DENYING INTERVENOR-DEFENDANT'S MOTION FOR RECONSIDERATION** |

This matter is before the Court on the Intervenor-Defendant's motion for reconsideration of this Court's September 6, 2013 order (the "September Order") granting in part and denying in part the Intervenor-Defendant's motion to dismiss. Dkt. No. 78, Intervenor-Defendant's Motion for Reconsideration of the Court's Order, Dated September 6, 2013, Granting in Part and Denying in Part Its Motion to Dismiss ("Mot."). According to the Intervenor-Defendant, this Court "committed an error of apprehension" when it "flatly ignore[d] decades of well-established federal Indian law" and "the applicable evidentiary record." Mot. at 1. In the Intervenor-Defendant's view, "justice requires that this error of apprehension be reconsidered by this Court." *Id*. at 7. The Court disagrees. Had this Court ignored applicable precedent and/or the evidentiary record, the September Order must be reconsidered *post haste*. However, because the Intervenor-Defendant has not identified any controlling law or evidence that this Court allegedly

overlooked, but instead, simply rehashes arguments that the Court has already reviewed and rejected, the motion for reconsideration is DENIED.

The standard for determining whether or not to grant a motion for reconsideration brought under Federal Rule of Civil Procedure 54(b) is the "as justice requires" standard. *Ludlam v. U.S. Peace Corps*, __ F. Supp. 2d __, 2013 WL 5273918, *1 (D.D.C. Sept. 19, 2013) (citing *Judicial Watch v. Dep't of Army*, 466 F. Supp. 2d 112, 123 (D.D.C. 2006)). In ruling on such a motion, a court may consider "whether the court patently misunderstood the parties, made a decision beyond the adversarial issues presented, made an error in failing to consider controlling decisions or data, or whether a controlling or significant change in the law has occurred." *Id*. (quoting *In Def. of Animals v. Nat'l Inst. of Health*, 543 F. Supp. 2d 70, 75 (D.D.C. 2008) (internal quotation marks omitted). A decision to reconsider under Rule 54(b) is within the court's sound discretion. *Cobell v. Norton*, 355 F. Supp. 2d 531, 540 (D.D.C. 2005). However, this discretion is "limited by the law of the case doctrine and subject to the caveat that where litigants have once battled for the court's decision, they should neither be required, nor without good reason permitted, to battle for it again." *Singh v. George Washington Univ*., 383 F. Supp. 2d 99, 101 (D.D.C. 2005)) (internal quotation marks omitted).

The Intervenor-Defendant is not pleased with the outcome of the September Order, a fact that is not surprising given that the Court ruled against it on all but one claim. However, it also appears that the Intervenor-Defendant fundamentally misunderstands the Court's ruling in the September Order. According to the Intervenor-Defendant, this Court made three findings in the Order: (1) that the California Valley Miwok Tribe ("Tribe") is not a federally recognized tribe; (2) that the Tribe lacks an organized government and was never previously recognize as having

one; and (3) that the Plaintiffs must be accepted as lineal descendants of the Tribe (and thus, as Tribal members). Mot. at 1. The Court made no such findings in the September Order.

As to the first alleged finding—that the Tribe is not federally recognized—the parties do not dispute that the Tribe is federally recognized. Indeed, this Court stated as much in the September Order. *See* Dkt. No. 76 at 2, September Order ("This is the latest volley in a long and bitter contest for control over the [Tribe], *a federally recognized tribe*.") (citing Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs, 78 Fed. Reg. 26,384, 26,385 (May 6, 2013)) (emphasis added).

Second, this Court did not find that the Tribe "lacks an 'organized' government," as the Intervenor-Defendant argues. Instead, this Court stated that "[p]rior to the [2011 Decision], the Secretary recognized no government of the Tribe." September Order at 15; 2011 Decision at AR 2050 (noting that the 2011 Decision "mark[s] a 180-degree change of course from positions defended by the Department in administrative and judicial proceedings over the past seven years."). This Court then rejected the Intevenor-Defendant's attempt to shield the 2011 Decision from review under the Administrative Procedure Act ("APA") by relying on the correctness of that Decision. In other words, the 2011 Decision established federal recognition of the General Council as the tribal government capable of asserting the Tribe's sovereign immunity. However, sovereign immunity vested by the 2011 Decision cannot shield the Decision, itself, from judicial review under the APA. Were the Court to accept the Intervenor-Defendant's invocation of sovereign immunity on the basis of the 2011 Decision, the Secretary's recognition decisions would be never be reviewable. September Order at 15 (quoting *Cherokee Nation of Oklahoma v. Babbitt*, 117 F.3d 1489, 1499 (D.C. Cir. 1997)).[1]

[1] The Intervenor-Defendant argues at length that the federal government has recognized the existence of an "organized government" for the Tribe since 1998. But here again, the Intervenor-Defendant relies on the veracity of

Nor did this Court determine that Plaintiffs are Tribal members. Instead, this Court *assumed* the truth of Plaintiffs' allegations that they are Tribal members based on lineal descent, for the limited purpose of assessing Plaintiffs' standing, as this Court must do when deciding a motion to dismiss. September Order at 9-10; *see LaRoque v. Holder*, 650 F.3d 777, 785 (D.C. Cir. 2011). The Court's acceptance of Plaintiffs' allegations, for purposes of evaluating standing within the context of a motion to dismiss, does not constitute a factual finding of any kind, let alone an erroneous finding that warrants reconsideration.

In short, the Intervenor-Defendant has failed to demonstrate that the Court "patently misunderstood the parties, made a decision beyond the adversarial issues presented, made an error in failing to consider controlling decisions or data, or [that] a controlling or significant change in the law has occurred." *Animals*, 543 F. Supp. 2d at 75. Accordingly, this Court declines to exercise its discretion to revisit arguments that this Court has already addressed and rejected.

For the foregoing reasons, the Court HEREBY DENIES the Intervenor-Defendant's motion for reconsideration of the September Order.

Dated this 6th day of November, 2013.

Barbara Jacobs Rothstein
U.S. District Court Judge

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the 2011 Decision to make this argument. Prior to the 2011 Decision, the Secretary declined to recognize that the Tribe had an "organized government." *See, e.g.,* 2004 Decision, AR 000499; 2005 Decision, AR 00610-000611. The District Court and the Court of Appeals for this Circuit upheld the 2004 and 2005 Decisions. *See California Valley Miwok Tribe v. United States*, 424 F. Supp. 2d 197 (D.D.C. 2006); *California Valley Miwok Tribe v. United States*, 515 F.3d 1262 (D.C. Cir. 2008). What is more, the 2011 Decision is stayed by its own terms pending the outcome of this case. AR 002056. Accordingly, the 2004 and 2005 Decisions (which the 2011 Decision did not rescind) remain the operative decisions pending resolution of this case.