

**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

**JOINT STATUS REPORT AND PROPOSED ORDER REGARDING THE
STATUS OF THE RECONSIDERED DECISION OF THE ASSISTANT
SECRETARY - INDIAN AFFAIRS**

Pursuant to this Court's order of August 15, 2011, the parties provide the following status report to the Court.

1. On January 24, 2011, Plaintiffs brought suit challenging the December 22, 2010 decision of the Assistant Secretary - Indian Affairs of the United States Department of the Interior ("Assistant Secretary"). *See* Dkt. No. 1.
2. On March 16, 2011, Plaintiffs filed a Motion for Preliminary Injunction, Dkt. No. 8, and, after granting the Defendants' Consent Motion for an Extension of Time, Dkt. No. 17, this Court ordered the Defendants to file their opposition to Plaintiffs' Motion for a Preliminary Injunction by April 5, 2011.
3. However, on April 1, 2011, the Assistant Secretary - Indian Affairs of the United States Department of the Interior set aside the prior December 22, 2010 decision

regarding the organization and governance of the California Valley Miwok Tribe.

See Joint Motion to Stay Litigation, Dkt. No. 22, ex. 1.

4. On April 8, 2011, the Assistant Secretary sent letters to both Mr. Yakima Dixie and Ms. Silvia Burley requesting responsive briefing pertaining to a number of issues. Joint Motion to Stay Litigation, Dkt. No. 22, ex. 3.
5. The April 8, 2011, letter set May 3, 2011, as the deadline for the respective parties' submission of briefs responding to the Assistant Secretary's inquiries. Both Mr. Dixie and Ms. Burley submitted briefs on May 3, 2011.
6. On April 19, 2011, the parties jointly requested this Court stay the litigation and all attendant deadlines so that the Assistant Secretary could prepare and issue the reconsidered decision. *See* Joint Motion to Stay Litigation, Dkt. No. 22.
7. On April 25, 2011, this Court issued a minute order granting the parties' joint motion to stay until July 7, 2011, and ordered the parties to file a joint status report and proposed order on July 7, 2011 as well.
8. On July 7, 2011, the parties filed a joint status report and requested this Court stay the litigation and all attendant deadlines until August 15, 2011, to accommodate the Assistant Secretary's ongoing preparation of the reconsidered decision. *See* Joint Status Report Regarding the Status of the Reconsidered Decision of the Assistant Secretary - Indian Affairs and Motion for Extension of the Temporary Stay of Litigation, Dkt. No. 23.
9. Plaintiffs consented to the extension on the condition that it was the final extension and that this Court order the Assistant Secretary to issue his reconsidered decision by August 15, 2011. *Id.* §§ 9, 9(a).

10. Defendants would not consent, however, to a condition mandating final agency action, and requested that should the Assistant Secretary not issue a reconsidered decision by August 15, 2011, that the result be a release of the voluntary stay. *Id.* §§ 9, 9(b). Accordingly, the parties each submitted a separate proposed order. *See id.*, Attachment 1-2.
11. On July 11, 2011, this Court granted the Joint Motion for Temporary Stay of Litigation and adopted Plaintiffs' proposed order. *See* Order Granting Joint Motion for Temporary Stay of Litigation, Dkt. No. 24. This Court's order struck paragraph 2, which requested, "This extension of the temporary stay shall be the final one granted by the Court and is conditioned upon the Assistant Secretary issuing his decision on reconsideration of the December 22, 2010 Decision on or before August 15, 2011." *Id.*
12. On August 12, 2011, the parties again requested the Court to extend the stay anticipating the issuance of the decision on August 26, 2011. This Court granted that request and stayed the litigation until September 2, 2011. *See* Order, Staying case until 09/02/11, Dkt. No. 26.
13. The Assistant Secretary issued the decision on Wednesday August 31, 2011. The Assistant Secretary reinstated his prior decision. While the August 31, 2011 decision is final for the Department for purpose of judicial review, the Assistant Secretary stayed the effectiveness of the August 31, 2011 decision pending resolution of this matter. As a result, the August 31, 2011 decision will have no force and effect until such time as this court renders a decision on the merits of plaintiffs' claims or grants a dispositive motion of the Federal Defendants.

14. Accordingly, no further temporary stay of the litigation is required.
15. Plaintiffs and Defendants request that the stay of the litigation be terminated and that a joint Status Report be filed by September 16, 2011 and that the Proposed Order be adopted.

Respectfully submitted this 1st day of September, 2011.

Respectfully submitted,

/s/ M Roy Goldberg

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CERTIFICATE OF SERVICE

I certify that on September 1, 2011, I filed a copy of the foregoing Joint Status Report and Proposed Order Regarding the Status of the Reconsidered Decision of the Assistant Secretary – Indian Affairs was filed 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/
Roy Goldberg