

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

CALIFORNIA VALLEY MIWOK TRIBE et
al.,

Plaintiffs,

v.

KEN SALAZAR, Secretary, United States
Department of the Interior, et al.,

Defendants,

and

CALIFORNIA VALLEY MIWOK TRIBE,

Intervenor-Defendant.

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

Hon. Barbara Jacobs Rothstein

**INTERVENOR-DEFENDANT'S MOTION FOR STAY OF COURT'S ORDER DATED
SEPTEMBER 6, 2013**

I. INTRODUCTION

Intervenor-Defendant the California Valley Miwok Tribe (“Tribe” or “Intervenor-Defendant”) hereby moves for a stay of the Court’s September 6, 2013 Order Granting Intervenor-Defendant’s Motion to Join a Required Party and Granting In Part and Denying In Part Intervenor-Defendant’s Motion to Dismiss pursuant to Fed. R. Civ. P. 62(b) (“Order,” Dkt. No. 77). This Order permitted the Tribe leave to file additional arguments in support of Federal Defendants’ Motion for Summary Judgment on or before September 20, 2013. However, the Tribe has filed concurrently herewith a Motion for Reconsideration of the Order (“Reconsideration Motion”). Accordingly, and in the interest of judicial economy, the Tribe respectfully requests that this Court enter the attached proposed order, staying the Court’s September 6, 2013 Order and all related briefing, pending consideration and resolution of the Reconsideration Motion.

II. FACTS

Plaintiffs filed their initial Complaint against the Secretary of the Department of the Interior, et al. (“Federal Defendants”) in the above-titled case on January 24, 2011. *See* Complaint, Dkt. No. 1 (January 24, 2011). In response, the Tribe, as an Intervenor-Defendant, filed its Motion to Intervene on March 17, 2011. *See* Motion to Intervene as a Defendant, Dkt. No. 11 (March 17, 2011). Plaintiffs thereafter amended their Complaint on October 17, 2011. *See* Plaintiffs’ First Amended Complaint, Dkt. No. 32 (October 17, 2011). In turn, the Tribe filed its amended Motion to Intervene on December 13, 2011. *See* Amended Motion to Intervene, Dkt. No. 35 (December 13, 2011). On March 26, 2012, the Court granted the Tribe leave to intervene for the limited purpose of filing a Motion to Dismiss for lack of subject matter jurisdiction, for failure to join an indispensable party, and for failure to state a claim. *See*

Memorandum Opinion and Order, Dkt. No. 52 at 6 (March 26, 2012). The Tribe's Motion to Dismiss was then entered on that same day. See Motion to Dismiss Plaintiffs' First Amended Complaint for Declaratory and Injunctive Relief by Intervenor-Defendant, Dkt. No. 58, (March 26, 2012). The Federal Defendants filed a Motion for Summary Judgment on March 29, 2012. See Cross Motion for Summary Judgment by Michael Black, Larry Echo Hawk, Ken Salazar, Dkt. No. 56 (March 29, 2012). The Tribe, who sought intervention for a limited purpose, did not file briefing related to the Federal Defendants' Motion for Summary Judgment.

On September 6, 2013, however, the Court issued its Order and Memorandum Opinion in support thereof, granting in part and denying in part the Tribe's Motion to Dismiss. See Dkt Nos. 77 and 76, respectively (September 6, 2013). Through its Order, the Court dismissed one of the Plaintiffs' claims but denied the Tribe's Motion to Dismiss in all other respects. *Id.* In addition, the Court granted the Tribe's motion to join a required party, ordering that Tribe be dismissed as an intervenor, and joined as a party defendant. *Id.* Although the Order granted the Tribe leave to file additional arguments in support of the Federal Defendants' Motion for Summary Judgment, it required that any such arguments be filed no later than September 20, 2013. *Id.*

In light of the Court's Order, the Tribe now files concurrently herewith its Reconsideration Motion. In summary, it appears that this Court may have erred in failing to consider binding authority, including *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978), and has thus made an "error of apprehension." See *Singh v. George Washington Univ.*, 383 F. Supp. 2d 99 (D.D.C. 2005). It further appears that this Court has mischaracterized the record on appeal from the Department of Interior's August 31, 2011 decision, and has made findings that lack any support in the record existing both at the administrative level and before this Court – including

but not limited to this Court's finding that the Tribe lacks a functioning government – which mistaken presumption appears to be the basis for the entire Order.

III. 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”). “On appropriate terms for the opposing party’s security, the court may stay the execution of a judgment—or any proceedings to enforce it—pending disposition of any of the following motions: . . . (4) under Rule 60, for relief from a judgment or order.” Fed. R. Civ. P. 62(b). The court has “broad discretion” as to whether to stay proceedings. *Clinton v. Jones*, 520 U.S. 681, 706 (1997). “[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.” *Landis v. North Am. Co.*, 299 U.S. 248, 254 (1936); *see also* Fed. R. Civ. P. 1.

In this instance, the Tribe respectfully requests that this Court stay the September 6, 2013 Order pending a decision on the Tribe’s Reconsideration Motion. It is well within the Court’s discretion to do so. Moreover, staying the Order would allow the Court to properly reconsider the serious jurisdictional concerns identified in the Tribe’s Motion to Dismiss and the long-standing and binding authorities cited therein, which must be carefully evaluated *before* the Court may begin to consider the merits on the Federal Defendants’ Motion for Summary Judgment.

In its Motion to Dismiss, the Tribe argued that the Plaintiffs’ Complaint suffers from serious jurisdictional defects, including lack of subject matter jurisdiction and failure to state a claim. *See Aftergood v. C.I.A.*, 225 F. Supp. 2d 27, 29 (D.D.C. 2002) (dismissing complaint

where court lacked subject matter jurisdiction). “Because subject-matter jurisdiction focuses on the court’s power to hear the plaintiff’s claim, a Rule 12(b)(1) motion imposes on the court an affirmative obligation to ensure that it is acting within the scope of its jurisdictional authority.” *Grand Lodge of Fraternal Order of Police v. Ashcroft*, 185 F. Supp. 2d 9, 13 (D.D.C. 2001). The Tribe respectfully submits that this Court must engage in a comprehensive analysis of these proposed jurisdictional defects as, if they do indeed exist – which the Tribe maintains they do – then this Court lacks jurisdiction to render any relief in this action (including relief on the Federal Defendants’ Motion for Summary Judgment) and must therefore dismiss the same. Staying the Order until it rules on the Tribe’s Reconsideration Motion would therefore assist this Court in its ability to control the disposition of this case with “economy of time and effort for itself, for counsel, and for litigants.”

Moreover, prior to entry of the Order, the Tribe was involved in this case only as an intervening defendant and thus lacked the ability to file arguments regarding the Federal Defendants’ Motion for Summary Judgment. The Order is significant because it joined the Tribe as a party defendant, allowing the Tribe an opportunity that it did not previously enjoy—the opportunity to file additional arguments in the present action. Accordingly, the Tribe seeks a stay of the Order so that it can preserve its ability to fully-evaluate all of the pleadings in this action, and file comprehensive arguments in support of the Federal Defendants’ Motion for Summary Judgment.

Lastly, a stay of the Court’s Order will not cause harm or prejudice to the parties because the Tribe plans to file its Reconsideration Motion in expedited fashion. The Tribe does not intend to drastically alter the briefing schedule; rather, it only seeks a stay of the Order pending a determination on its Reconsideration Motion to ensure that serious jurisdictional concerns are

properly heard before the Court turns to the merits of either summary judgment motion. In contrast, there is little question that the denial of a Motion for Stay pending a ruling on the Tribe's Reconsideration Motion will cause irreparable harm to the Tribe; at a minimum, it will force the Tribe to address these very significant jurisdictional and other issues on two separate yet parallel tracks, simultaneously.

IV. CONCLUSION

According to the Court's September 6, 2013 Order regarding the Tribe's Motion to Dismiss, the Tribe is required to file any additional arguments in support of the Federal Defendants' Motion for Summary Judgment no later than September 20, 2013. The Tribe's Reconsideration Motion, however, filed concurrently herewith, requests that this Court reconsider several issues raised in the Motion to Dismiss. The Tribe's Motion to Dismiss involves serious jurisdictional concerns which must be properly and comprehensively evaluated before this Court turns to the issues pertaining to any summary judgment motions.

Therefore, in order to preserve the status quo and prevent irreparable harm, the Tribe respectfully submits that the Court should stay the Order until it has ruled on the Reconsideration Motion.

CERTIFICATION OF CONFERRAL

On September 16, 2013, and again on September 20, 2013, counsel for Intervenor-Defendant discussed the relief sought herein with counsel for Plaintiffs and the Intervenor Defendants. Plaintiffs' counsel stated that Plaintiffs would oppose the relief sought by Intervenor-Defendant. Federal Defendants' counsel stated that they take no position on

...

Intervenor-Defendant's Motion for Reconsideration, but that they oppose Intervenor-Defendant's Motion For Stay of Court's Order Dated September 6, 2013.

Dated: September 20, 2013

Respectfully submitted,

By: /s/ Robert A. Rosette
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[PROPOSED] ORDER GRANTING MOTION TO STAY

UPON CONSIDERATION of Intervenor-Defendant's Motion for Stay and for good cause shown, it is hereby ORDERED that the Motion is GRANTED.

It is further ORDERED that all deadlines related to the briefing of any other pending motions in this matter are STAYED and otherwise tolled for a period of **twenty-one (21) calendar days** following this Court's issuance of an order on the Intervenor-Defendant's Motion for Reconsideration.

SIGNED this ____ day of _____, 2013.

BARBARA JACOBS ROTHSTEIN
United States District Judge

CERTIFICATE OF SERVICE

I certify that on September 20, 2013, I caused a true and correct copy of the foregoing

INTERVENOR-DEFENDANT'S MOTION FOR STAY OF COURT'S
ORDER DATED SEPTEMBER 6, 2013;

and

[PROPOSED] ORDER GRANTING MOTION TO STAY

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