UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AKIACHAK NATIVE COMMUNITY et al.,	)	
Plaintiffs,	)	
v.	)	No. 1:06-cv-00969 (RC)
DEPARTMENT OF THE INTERIOR et al.,	)	
Defendants.	)	

PLAINTIFFS' MEMORANDUM IN OPPOSITION TO INTERVENOR-DEFENDANT'S MOTION FOR RECONSIDERATION, OR IN THE ALTERNATIVE, FOR CERTIFICATION FOR INTERLOCUTORY REVIEW

I. Introduction

This matter comes before the court on Intervenor-Defendant State of Alaska's Motion for Reconsideration, or in the Alternative, for Certification for Interlocutory Review (State's Motion).[1] The State seeks reconsideration of the court's March 31 Memorandum Opinion (Opinion)[2] and Order,[3] or should reconsideration be denied, the State requests the court certify its Opinion and Order under 28 U.S.C. § 1292(b) for interlocutory appellate review.[4] The

[1] *Akiachak Native Cmty. et al. v. Dept. of Interior*, No. 1:06-cv-00969 (RC) (D.C.C. April 17, 2013), Dkt. #112.

[2] *Akiachak Native Cmty. et al.*, No. 1:06-cv-00969 (RC) (D.C.C. March 31, 2013), Dkt. #109.

[3] *Akiachak Native Cmty. et al.*, No. 1:06-cv-00969 (RC) (D.C.C. March 31, 2013), Dkt. #110.

[4] State's Motion at 1, *Akiachak Native Cmty. et al.*, No. 1:06-cv-00969 (RC), Dkt. #112.

State has failed to carry its burden to show reconsideration is warranted and that the requirements for certification have been met. Therefore, the State's motion should be denied.

II. The State Has Failed to Prove That the Interests of Justice Support Reconsideration of the Court's Order Under Civil Rule 54(b).

Under Civil Rule 54(b),[5] any order "that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties . . . may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities."[6] Rule 54(b) permits the court to reconsider its interlocutory orders "as justice requires."[7] However, as a rule a court "should be loathe to [revisit its own prior decisions] in the absence of extraordinary circumstances such as where the initial decision was clearly erroneous and would work a manifest injustice."[8] This general rule exists to "promote finality, predictability and economy of judicial resources . . . ."[9]

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[5] The State incorrectly cites Federal Rule of Civil Procedure 60(b)(6) as grounds for reconsideration. State's Motion at 1, *Akiachak Native Cmty. et al.*, No. 1:06-cv-00969 (RC), Dkt. #112; Memorandum in Support of State of Alaska's Motion for Reconsideration, or in the Alternative, for Certification for Interlocutory Review (State's Memorandum) at 4, *Akiachak Native Cmty. et al.*, No. 1:06-cv-00969 (RC), Dkt. #112-1. Rule 60(b)(6) is inapplicable at this juncture because the court's Opinion and Order are not a "final judgment, order, or proceeding." Fed. R. Civ. P. 60(b). The court has yet to enter final judgment in this case and is currently awaiting briefing by the parties on the proper remedy. Opinion at 25, *Akiachak Native Cmty. et al.*, No. 1:06-cv-00969 (RC), Dkt. #109. Because final judgment is yet to be entered, the court should consider the State's Motion under Rule 54(b) and its "interests of justice" standard. *See Greene v. Union Mut. Life Ins. Co. of Am.*, 764 F.2d 19, 22-23 (1st Cir. 1985) (district court committed reversible error by applying Civil Rule 60(b) and its criteria when reconsidering a previous interlocutory order) (citied with favor in *Capitol Sprinkler Inspection, Inc. v. Guest Servs., Inc*., 630 F.3d 217, 227 (D.C. Cir. 2011)).

[6] Fed. R. Civ. P. 54(b).

[7] *Cobell v. Norton*, 224 F.R.D. 266, 272 (D.D.C. 2004).

[8] *Lederman v. U.S.*, 539 F.Supp.2d 1, 2 (D.D.C. 2008) (quoting *Christianson v. Colt Indus. Operating Corp.*, 486 U.S. 800, 817 (1988)).

[9] *Id*.

Under the "interests of justice" standard, reconsideration may be justified where there was a patent misunderstanding of the parties, where a decision was made that exceeded the issues presented, where a court failed to consider controlling law, or where a significant change in the law occurred after the decision was rendered.[10] The party seeking reconsideration bears the burden of proving that reconsideration is warranted, and that some harm or injustice would result if reconsideration were to be denied.[11]

In *Estate ex rel. Gaither v. District of Columbia*, a party whose summary judgment motion was denied sought reconsideration under Civil Rule 54(b), which was in turn denied by the district court.[12] On appeal, the court determined that the motion for reconsideration offered nothing more than a reiteration of the arguments previously made in the underlying summary judgment motion.[13] Calling the motion for reconsideration a "waste of limited time and resources," the court cautioned that such motions "cannot be used as 'an opportunity to reargue facts and theories upon which a court has already ruled, nor as a vehicle for presenting theories or arguments that could have been advanced earlier.'" [14]

The State requests the court reconsider its ruling that the Secretary of the Interior (Secretary) retains the authority to take land into trust on behalf of Alaska Natives and its Order

[10] *Singh v. George Washington Univ.*, 383 F.Supp.2d 99, 101 (D.D.C. 2005) (quoting *Cobell*, 224 F.R.D. at 272).

[11] *In Def. of Animals v. Nat'l Institutes of Health*, 543 F.Supp.2d 70, 76 (D.D.C. 2008) (citing *Cobell v. Norton*, 355 F.Supp.2d 531, 539-40 (D.D.C. 2005)).

[12] *Estate ex rel. Gaither v. Dist. of Columbia*, 771 F.Supp.2d 5, 8 (D.D.C. 2011).

[13] *Id*. at 10.

[14] *Id*. (quoting *Secs. & Exch. Comm'n v. Bilzerian*, 729 F.Supp.2d 9, 14 (D.D.C. 2010)).

for further briefing as to the scope of the remedy.[15] The State's basis for requesting reconsideration is that "substantial grounds for difference of opinion exist with respect to the court's ruling . . . ."[16] The State then spends five pages arguing that the Secretary's land-into-trust authority was terminated by the Alaska Native Claims Settlement Act (ANCSA), that ANCSA is antithetical to trust lands in Alaska, and that ANCSA requires the Secretary's land-into-trust regulations contain an "Alaska exception."[17]

The State's arguments in its Motion are not just similar to those made in its Summary Judgment Motion filed in 2008—they are exactly the same.[18] At no point does the State identify where there was "a patent misunderstanding of the parties, where a decision was made that exceeded the issues presented, where a court failed to consider controlling law, or where a significant change in the law occurred after the decision was rendered."[19] At no point does the State allege that some harm or injustice would result if reconsideration were to be denied.[20] The State's Motion is simply an attempt to relitigate arguments made in the State's Summary Judgment Motion. Motions for reconsideration "cannot be used as 'an opportunity to

[15] State's Memorandum at 4, *Akiachak Native Cmty. et al.*, No. 1:06-cv-00969 (RC), Dkt. #112-1.

[16] *Id*. Whether there are "substantial grounds for difference of opinion" about the court's Order is not a factor in deciding whether a "manifest injustice" would result and thereby make reconsideration necessary. Rather, the phrase "substantial grounds for difference of opinion" is one of the three conditions for seeking interlocutory appeal under 28 U.S.C. § 1292(b)—a fact the State readily admits. State's Memorandum at 4-5, *Akiachak Native Cmty. et al.*, No. 1:06-cv-00969 (RC), Dkt. #112-1. How a criterion for an interlocutory appeal applies to the "interests of justice" standard under Rule 54(b) is unclear.

[17] State's Memorandum at 5-10, *Akiachak Native Cmty. et al.*, No. 1:06-cv-00969 (RC), Dkt. #112-1.

[18] *Id.* at 7; State of Alaska's Opposition to Plaintiffs' Motion for Summary Judgment and Cross-Motion for Summary Judgment (State's Summary Judgment Motion) at 11, *Akiachak Native Cmty. et al.*, No. 1:06-cv-00969 (RWR) (D.C.C. June 13, 2008), Dkt. #76.

[19] *Singh*, 383 F.Supp.2d at 101.

[20] *In Def. of Animals*, 543 F.Supp.2d at 76.

reargue facts and theories upon which a court has already ruled, nor as a vehicle for presenting theories or arguments that could have been advanced earlier.'" [21] The State's attempt to reargue its summary judgment motion under the guise of a motion for reconsideration is a strategy explicitly repudiated by the D.C. Circuit Court in *Estate ex rel. Gaither*.[22] The State has not shown that the interests of justice favor reconsideration of the court's March 31 Order and Opinion.

Not only has the State failed to carry its burden to show that the interests of justice favor reconsideration, it fails to recognize Plaintiffs' interests in finally having this matter reach a conclusion. The general rule disfavoring reconsideration exists to, among other things, "promote finality" in judicial proceedings.[23] Plaintiffs filed their complaint in May 2006—nearly seven years ago.[24] Before that, Plaintiffs spent nearly a decade petitioning the Secretary to revise the land-into-trust regulations and create procedures for taking Alaska Native lands into

[21] *Estate ex rel. Gaither*, 771 F.Supp.2d at 8 (internal quotations ommitted).

[22] In *Estate ex rel. Gaither*, the court noted that the Defendants sought "to relitigate the matter anew in the guise of a motion for 'reconsideration.'"

> However, 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. That is especially true where, as here, a party seeks to resurrect an argument that it made in the context of summary judgment outside all the procedural safeguards attendant to summary judgment, including the exchange of statements delineating the disputed factual allegations. The Court declines Defendants' invitation to permit them to use Rule 54(b) as a vehicle for rearguing the merits of their position where they failed to do so adequately in the first place.

Id. at 12-13 (internal quotation marks omitted).

[23] *Lederman*, 539 F.Supp.2d at 2 (internal quotations omitted).

[24] Complaint, *Akiachak Native Cmty. et al.*, No. 1:06-cv-00969 (RWR) (D.C.C. May 24, 2006), Dkt. #1.

trust.[25] In all, Plaintiffs have spent nineteen years seeking a final answer to the question of trust lands in Alaska. The court's March 31 Order and Opinion offers that finality. The State seeks reconsideration of that Order because it disagrees with the holding. Reconsideration however, is granted only "as justice requires."[26] The State has failed to show that some harm or injustice would result if reconsideration were to be denied.[27] In fact, the opposite is true. Were reconsideration granted, the finality the Plaintiffs' have been seeking would be stripped away. Such an outcome is not in the interests of justice. The motion for reconsideration must be denied.

A. The State's Request to Reconsider the Order for Briefing on the Scope of the Remedy is Premature and Unnecessary.

The State requests reconsideration of the court's Order for briefing on the scope of the remedy following summary judgment.[28] The State argues that after finding a regulation unlawful, the court's only option is to remand the action back to the agency for "further action consistent with the corrected legal standards."[29] Thus, the State objects to any further briefing on remedies.[30]

The State's objection to the briefing Order is premature and unnecessary. It is premature because the substance of the State's argument is that remanding to the agency is the

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[25] *Id*. at 6-7

[26] *Capitol Sprinkler Inspection, Inc.*, 630 F.3d at 227.

[27] *In Def. of Animals*, 543 F.Supp.2d at 76.

[28] State's Memorandum at 10, *Akiachak Native Cmty. et al.*, No. 1:06-cv-00969 (RC), Dkt. #112 -1.

[29] *Id*. at 11 (quoting *Cnty. of L.A. v. Shalala*, 192 F.3d 1005, 1011 (D.C. Cir. 1999) (internal quotations omitted)).

[30] State's Memorandum at 11, *Akiachak Native Cmty. et al.*, No. 1:06-cv-00969 (RC), Dkt. #112 -1.

proper remedy—an argument that needs to be made in the State's forthcoming brief on remedies as ordered by the court. It is unnecessary because Plaintiffs' position is that a remand to the agency is the proper remedy following summary judgment. Furthermore, because the State's objection to the briefing Order is framed as a request for reconsideration, it bears the burden of showing reconsideration is warranted and that some harm or injustice would result if reconsideration were to be denied.[31] As discussed above, the State has made no such showing. Its request should therefore be denied.

III. The State Has Failed to Carry its Heavy Burden in Showing the Court's Memorandum Opinion Meets the Requirements for Interlocutory Review Under 28 U.S.C. § 1292(b).

The State argues that, should the court deny the request for reconsideration, the court's Order should be certified for interlocutory review pursuant to 28 U.S.C. § 1292(b).[32] Because it has failed to show two of the three requirements for interlocutory review, the court should deny the State's request.

The court may certify an order for interlocutory review when three conditions are met: (1) the order involves a controlling question of law; (2) a substantial ground for difference of opinion concerning the ruling exists; and (3) an immediate appeal would materially advance the disposition of the litigation.[33] Even if met, the three conditions outlined in § 1292(b) do not create a mandate; certification for interlocutory review is left to the court's discretion.[34]

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[31] *In Def. of Animals*, 543 F.Supp.2d at 76.

[32] State's Memorandum (Doc. #112-1) at 12.

[33] 28 U.S.C. § 1292(b).

[34] *Swint v. Chambers Cnty. Comm'n*, 514 U.S. 35, 47 (1995).

Interlocutory appeals are generally disfavored because they run counter to the "strong congressional policy against piecemeal reviews and against obstructing or impeding an ongoing judicial proceeding . . . ."[35] For these reasons, interlocutory appeals are "rarely allowed"[36] and the party seeking review under § 1292(b) bears the burden of demonstrating that "exceptional circumstances justify a departure from the ordinary policy of postponing appellate review until after entry of final judgment."[37] Furthermore, "[r]outine resort to § 1292(b) requests hardly comport with Congress' design to reserve interlocutory review for exceptional cases while generally retaining for the federal courts a firm final judgment rule."[38]

The court's Order and Opinion contain two central holdings: (1) the Secretary has the authority to take land into trust on behalf of Alaska Natives, and (2) the Secretary's regulations at 25 C.F.R. Part 151, excluding Alaska Natives from the land into trust process, violate 25 U.S.C. § 476(f). Plaintiffs do not dispute that these holdings meet the requirement for "controlling question[s] of law" under § 1292(b).[39] However, because the State fails to demonstrate that the court's Order meets the other two conditions required by § 1292(b), while

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[35] *Judicial Watch, Inc. v. Nat'l Energy Policy Dev. Group*, 233 F.Supp.2d 16, 20 (D.D.C. 2002) (quoting *United States v. Nixon*, 418 U.S. 683, 690 (1974)). *See also In re Lorazepam & Clorazepate Antitrust Litig.*, 289 F.3d 98, 105 (D.C. Cir. 2002) ("[I]nterlocutory appeals are generally disfavored as 'disruptive, time consuming, and expensive' for both the parties and the courts, and the more so in a complex class action where the district court may reconsider and modify the class as the case progresses." (quoting *Waste Mgmt. Holdings, Inc. v. Mowbray*, 208 F.3d 288, 294 (1st Cir. 2000))).

[36] *First Am. Corp. v. Al-Nahyan*, 948 F.Supp. 1107, 1116 (D.D.C. 1996).

[37] *Garcia v. Johanns*, 444 F.3d 625, 636 (D.C. Cir. 2009) (citing *U.S. v. Philip Morris USA, Inc.*, 396 F.3d 1190, 1209 (D.C. Cir. 2005)).

[38] *Caterpillar Inc. v. Lewis*, 519 U.S. 61, 74 (1996) (citations and quotations omitted).

[39] A "controlling question of law" under § 1292(b) "is one that would require reversal if decided incorrectly or that could materially affect the course of litigation with resulting savings of the court's or the parties' resources." *Judicial Watch, Inc.*, 233 F.Supp.2d at 19.

also failing to show the "exceptional circumstances"[40] necessary to overcome the "strong congressional policy against piecemeal reviews,"[41] the request for § 1292(b) certification should be denied.

A. The State Has Failed to Demonstrate Any Substantial Grounds for Difference of Opinion Justifying § 1292(b) Certification.

Under § 1292(b), the moving party must demonstrate that the court's order involves a question of law "as to which there is a substantial ground for difference of opinion."[42] The moving party's disagreement with the court's reasoning does not constitute a substantial ground for difference of opinion.[43] Rather, the basis for a substantial ground for difference of opinion must be one that gives the court pause.[44] A substantial ground for difference of opinion may be established where there are conflicting decisions by other circuit courts or by other courts in the same district.[45] However, the "mere fact that a substantially greater number of judges have resolved the issue one way rather than another does not, of itself, tend to show that there is no ground for difference of opinion."[46]

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[40] *Garcia*, 444 F.3d at 636.

[41] *Judicial Watch, Inc.*, 233 F.Supp.2d at 20.

[42] 28 U.S.C. § 1292(b).

[43] *First Am. Corp. v. Al-Nahyan*, 948 F. Supp. 1107, 1117 (D.D.C. 1996).

[44] *APCC Serv's, Inc. v. AT&T Corp.*, 297 F.Supp.2d 101, 107 (D.D.C. 2003) ("A court faced with a motion for certification must analyze the strength of the arguments in opposition to the challenged ruling to decide whether the issue is truly one on which there is a substantial ground for dispute.") (citing *Daetwyler Corp. v. R. Meyer*, 575 F.Supp. 280, 283 (E.D.Pa. 1983)).

[45] *APCC Serv's*, 297 F.Supp.2d at 105. *See also In re Bridgestone/Firestone, Inc. Tires Prods. Liab. Litig.*, 212 F.Supp.2d 903, 909-10 (S.D. Ind. 2002) (certification is appropriate where other courts have adopted conflicting positions regarding the issue of law proposed for certification).

[46] *APCC Serv's*, 297 F.Supp.2d at 105 (citing *In re Vitamins Antitrust Litigation*, No. 99-197 TFH, 1285, 2000 WL 33142129 at *2 (D.D.C. Nov. 22, 2000) (internal citations omitted)).

In *APCC Services, Inc. v. AT&T Corp.*, the district court determined there was a substantial ground for difference of opinion where it recognized its ruling stood in direct conflict with a Ninth Circuit ruling relying on the same Supreme Court precedent.[47] In *AF Holdings, LLC v. Does 1-1,058*, the court determined substantial grounds for difference of opinion existed where there was a split between judges, within the D.C. District, on a pretrial discovery issue.[48] The court determined it was proper to certify the question for interlocutory review in order for the D.C. Circuit Court to finally settle the issue.[49]

The State argues there is a substantial ground for difference of opinion concerning the Secretary's authority to take land into trust for Alaska Natives for two reasons: (1) its reading of ANCSA as "antithetical to the concept of trust lands," and (2) the Secretary's evolving position on Alaska trust lands since ANCSA's passage.[50] As discussed above, these arguments are little more than a rehash of those made in the State's summary judgment motion and the court has already found them unpersuasive.[51] The State does not argue the court's Order and Opinion create a split in authority between the circuits or the within D.C. District. Nor does the State argue that the court's reasoning is a departure from long standing precedent. Rather, all the

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[47] *APCC Serv's*, 297 F.Supp.2d at 107 (citing *Greene v. Sprint Commc'ns Co.*, 340 F.3d 1047, 1052 (9th Cir. 2003)).

[48] 286 F.R.D. 39, 63 (D.D.C. 2012).

[49] *Id*.

[50] State's Memorandum at 14-15, *Akiachak Native Cmty. et al.*, No. 1:06-cv-00969 (RC), Dkt. #112 -1.

[51] *See* Opinion at 18, *Akiachak Native Cmty. et al.*, No. 1:06-cv-00969 (RC) (D.C.C. March 31, 2013), Dkt. #109 ("There may be a tension between ANCSA's elimination of most trust property in Alaska and the Secretary's authority to create new trust land, but a tension is not an 'irreconcilable conflict.' It is perfectly possible for land claims to be settled by transferring land and money to tribal corporations, while the Secretary retains the discretion—but not the obligation—to take additional lands . . . into trust. . . . Because it is possible to give effect to both ANCSA and the statute giving the Secretary land-into-trust authority in Alaska, it is the court's obligation to do so.").

State has offered is its own personal disagreement with the court's ruling. But, the moving party's disagreement with the court's ruling does not constitute a substantial ground for difference of opinion.[52] The State has failed to carry its burden in showing there is a substantial ground for difference of opinion warranting § 1292(b) certification.

B. An Immediate Appeal Under § 1292(b) Would Not Materially Advance the Disposition of This Litigation.

The final condition for certification under § 1292(b) is that "an immediate appeal from the order [would] materially advance the ultimate termination of the litigation."[53] Immediate appeals under § 1292(b) are proper when they "conserve judicial resources and spare the parties from possibly needless expense" in the event of reversal.[54] However, the issues subject to immediate appeal are generally collateral; meaning their determination on appeal "would conclusively resolve important legal issues that are completely separate from the merits of the action."[55] In *Howard v. Office of Chief Administrative Officer of U.S. House of Representatives*, the court held an immediate appeal was warranted where a ruling on an issue of constitutional immunity would determine whether the plaintiff's case could proceed.[56] In *AF Holdings LLC*, the court likewise determined an immediate appeal was warranted where a

[52] *First Am. Corp.*, 948 F. Supp. at 1117.

[53] 28 U.S.C. § 1292(b).

[54] *APCC Services, Inc.*, 297 F.Supp.2d at 109.

[55] *Howard v. Office of Chief Admin. Officer of U.S. House of Representatives*, 840 F.Supp.2d 52, 57 (D.D.C. 2012) (quoting *APCC Services, Inc.*, 297 F.Supp.2d at 100). *See also Lemery v. Ford Motor Co.*, 244 F.Supp.2d 720, 728 (S.D. Tex. 2002) ("It would pain the Court to see both attorneys . . . [and parties] proceed to judgment after considerable expense and delay, only to discover that the judgment must be overturned on appeal because the federal judiciary *lacks subject matter jurisdiction*.") (emphasis added) (cited with favor in *APCC Services, Inc.*, 297 F.Supp.2d at 108).

[56] *Howard*, 840 F.Supp.2d at 57.

reversal of the court's pre-trial discovery order would result in a subpoena duces tecum being quashed.[57]

The State argues that an immediate appeal under § 1292(b) is warranted because "Alaska must appeal the merits of the court's Memorandum Opinion at some point . . . ."[58] However, there are no "important legal issues that are completely separate from the merits of the action" left in this case. The parties have yet to brief the court on a proper remedy. The State is attempting to use the immediate appeal procedure under § 1292(b), normally reserved for collateral issues such as standing, defenses, and jurisdiction, to by-pass the final judgment rule and begin a full merits appeal of this case. The State's argument is not only contrary to the case law on immediate appeals under § 1292(b), but is in outright conflict with the "strong congressional policy against piecemeal reviews . . . ."[59] An interlocutory appeal at this point in the case would not materially advance the ultimate termination of the litigation; it would only serve to delay final judgment in an already years long case.[60] The State has failed to carry its burden of demonstrating "exceptional circumstances justify[ing] a departure from the ordinary policy of postponing appellate review until after entry of final judgment."[61] The State's request

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[57] 286 F.R.D. at 64.

[58] State's Memorandum at 16, *Akiachak Native Cmty. et al.*, No. 1:06-cv-00969 (RC), Dkt. #112-1.

[59] *Judicial Watch, Inc.*, 233 F.Supp.2d at 20 (D.D.C. 2002) (internal quotations omitted).

[60] *See Arias v. Dyncorp, et. al.*, 856 F. Supp.2d 46, 54 (D.D.C. 2012) (citing the prolonged appeals process in denying interlocutory review under 28 U.S.C. § 1292(b)). *See also Chennareddy v. Dodaro*, Civ. Action No. 87-3538 (EGS), 2010 WL 3025164 at *2 (D.D.C. July 22, 2010) ("Allowing immediate appeal of this Court's discovery Order would result in piecemeal review of the Court's decision and would not materially advance the ultimate termination of the litigation. In fact, the opposite is more likely true: allowing an immediate appeal of this discovery issue would likely only cause further delay to this case that has *already been pending for over twenty years.*") (emphasis added).

[61] *Garcia*, 444 F.3d at 636 (internal citations omitted).

for certification is nothing more than a "routine resort to § 1292(b)"[62] and therefore it should be denied.

IV. Conclusion

For the reasons stated above, the State's Motion for Reconsideration, or in the Alternative, for Certification for Interlocutory Review should be denied.

Dated this 1st day of May, 2013.

Respectfully submitted,

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[62] *Caterpillar Inc.*, 519 U.S. at 74 ("Routine resort to § 1292(b) requests hardly comport with Congress' design to reserve interlocutory review for exceptional cases while generally retaining for the federal courts a firm final judgment rule.") (internal citations and quotations omitted).

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that, in the above captioned case, on the 1st day of May, 2013, a true and correct copy of **PLAINTIFFS' MEMORANDUM IN OPPOSITION TO INTERVENOR-DEFENDANT'S MOTION FOR RECONSIDERATION, OR IN THE ALTERNATIVE, FOR CERTIFICATION FOR INTERLOCUTORY REVIEW** was served by electronic means upon the following:

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