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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

ALBERT P. ALTO, et al.,

Plaintiffs,

vs.

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

Defendants.

CASE NO. 11cv2276 – IEG (BLM)

**ORDER DENYING WITHOUT  
PREJUDICE UNRESOLVED  
PORTIONS OF THE TRIBE’S  
MOTION TO DISMISS**


[Doc. No. 70.]

On June 13, 2012, the Court denied in part and deferred ruling in part Intervenor San Pasqual Band of Mission Indians (the “Tribe”)’s motion to dismiss. [Doc. No. 82.] On June 19, 2012, the Tribe filed notice of its appeal of the Court’s June 13, 2012 Order denying the Tribe’s motion to dissolve the preliminary injunction. [Doc. No. 87.] The filing of this notice of appeal divested the Court of jurisdiction. *See Natural Res. Def. Counsel v. Southwest Marine, Inc.*, 242 F.3d 1163, 1166 (9th Cir. 2001) (“Once notice of appeal is filed, the district court is divested of jurisdiction over matters being appealed.”); *see also Kern Oil & Refining Co. v. Tenneco Oil Co.*, 840 F.2d 730, 734 (9th Cir. 1988) (this rule of divestment is “designed to avoid the confusion and waste of time that might flow from putting the same issues before two courts at the same time.”). Therefore, the Court **DENIES WITHOUT PREJUDICE** the portions of the Tribe’s motion to dismiss left unresolved by the Court’s prior order, [Doc. No. 82]. As appropriate, the Tribe may

1 refile these unresolved portions of its motion to dismiss upon resolution of its appeal.

2 **IT IS SO ORDERED.**

3 Dated: February 21, 2013

  
IRMA E. GONZALEZ,  
United States District Judge

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