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## Wolfsen Land & Cattle Company v. Pacific Coast Federation of Fishermen's Associations

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*Wolfsen Land & Cattle Company v. Pacific Coast Federation of Fishermen's Associations*, 695 F.3d 1310 (Fed. Cir. 2012).

**Ali Guio**

**ABSTRACT**

In a case of first impression, the Circuit Court of Appeals for the Federal Circuit reviewed a trial court ruling on a motion to intervene as a matter of right. In reviewing the Federal Claims Rule for intervention as of right, the court assessed the necessary showing of facts required by the intervenor to meet its burden of proving that adequate representation could not be made by an existing party. The court found that the trial court properly denied Pacific Coast Federation of Fishermen's Associations' ("PCFFA") motion because its litigation goals were the same as those of the government, and therefore the court's conclusion would resolve the government's contentions at the same time as it would the PCFFA similar and related arguments.

**I. INTRODUCTION**

In the case below, Wolfsen Land and Cattle Company and other landowners downstream from the Friant Dam sued the federal government in a takings claim regarding the release of water from the dam in accordance with a previous litigation settlement and congressional mandate.<sup>1</sup> Pacific Coast Federation of Fishermen's Associations moved to intervene as a matter of right in that suit.<sup>2</sup> The U.S. Court of Federal Claims denied the motion, holding that PCFFA did not meet its burden under U.S. Court of Federal Claims Rule 24(a)(2).<sup>3</sup> On appeal, the circuit court reviewed the

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<sup>1</sup> *Wolfsen Land & Cattle Co. v. Pac. Coast Fed'n of Fishermen's Associations*, 695 F.3d 1310, 1313 (Fed. Cir. 2012).

<sup>2</sup> *Id.* at 1314.

<sup>3</sup> *Id.*

denial of PCFFA's motion.<sup>4</sup> The Federal Circuit affirmed the trial court's denial of the motion based on a similar finding that PCFFA failed to meet its burden under the rule to show that no existing party represented its legally protectable interests.<sup>5</sup>

## **II. HISTORICAL AND PROCEDURAL BACKGROUND**

The Friant Dam is located on the upper San Joaquin River near Friant, California.<sup>6</sup> Since 1942, its main functions have been generating electricity and collecting water for agricultural use.<sup>7</sup> The dam also caused portions of the San Joaquin River to dry up, causing ecological damage and eliminating critical existing habitat for endangered Chinook salmon and other non-endangered species.<sup>8</sup>

In a case lasting from 1988 to 2006, several environmental groups sued the federal government over operation of the dam, claiming it violated state and federal environmental protection laws.<sup>9</sup> The parties reached a settlement in 2006, whereby the government was ordered to release water from the dam to restore and maintain downstream aquatic populations while still maintaining its obligations to the landowners who depended on water for agricultural production.<sup>10</sup> Some of the court-ordered actions required legislative authority, which Congress granted by passing the San Joaquin River Restoration Settlement Act of 2009.<sup>11</sup>

After the government began releasing water from the Dam in 2009, in compliance with the settlement, downstream landowners brought the underlying takings suit.<sup>12</sup> The

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<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 1315.

<sup>6</sup> *Id.* at 1313.

<sup>7</sup> *Wolfsen Land & Cattle Co.*, 695 F.3d at 1313.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 1313-1314 (referring to *Wolfsen Land & Cattle Co. v. United States*, 98 Fed.Cl. 507 (2011)).

plaintiffs sought compensatory damages and legal expenses.<sup>13</sup> PCFFA moved to intervene as of right pursuant to Court of Federal Claims Rule 24(a)(2).<sup>14</sup> The court denied the motion, and PCFFA subsequently appealed.<sup>15</sup>

### III. ANALYSIS

#### **A. Majority Opinion**

The court based its analysis of Court of Federal Claims Rule 24(a)(2) and related case law from other circuits regarding whether or not to grant an intervention as of right.<sup>16</sup> The court declined to rule on the appropriate standard of review for reviewing a trial court's denial of a motion for intervention as of right, stating that it would have upheld the trial court's ruling under either a de novo or abuse of discretion standard, so a specific finding was not necessary.<sup>17</sup>

Court of Federal Claims Rule 24(a)(2) states four requirements for a motion for intervention as of right: (1) "the motion must be timely;" (2) the party must claim a "legally protectable" interest in the subject of the action; (3) the interest must be related to the action such that "the intervenor will either gain or lose by the *direct* legal operation and effect of the judgment;" and (4) the party must show that its interest is not adequately represented by an existing party.<sup>18</sup> The court did not address the first three requirements in detail, because it resolved the case on the grounds of PCFFA's claim of inadequate representation.<sup>19</sup>

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<sup>13</sup> *Wolfsen Land & Cattle Co.*, 695 F.3d at 1314.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 1314–1316.

<sup>17</sup> *Id.* at 1314.

<sup>18</sup> *Id.* at 1315.

<sup>19</sup> *Wolfsen Land & Cattle Co.*, 695 F.3d at 1315.

Under existing precedent, showing inadequacy of representation required only a showing that the representation of the potential intervener's interest "'may be' inadequate as to some aspects of the case . . .'"<sup>20</sup> As the issue was one of first impression for the Federal Circuit Court of Appeals, it examined persuasive authority from other circuits. The court held that when a party moves to intervene as of right and the government is a party, there is a presumption that the government adequately represents the interests of its citizens on issues that invoke "sovereign interests."<sup>21</sup> PCFFA, thus, had the burden to overcome the presumption and to make a compelling showing that the government might not adequately protect PCFFA's interests.<sup>22</sup> PCFFA reasoned that the danger of insufficient representation could have occurred if the government was unable or unwilling to follow through with the goals of the previous settlement agreement in the event landowners were unwilling to sell their rights for a reasonable price.<sup>23</sup>

In analyzing PCFFA's claims, the court determined that PCFFA and the government had the same goal and motivation in the case, which was to defeat Wolfsen's claims.<sup>24</sup> The case would, therefore, proceed no differently if the court were to allow PCFFA to intervene.<sup>25</sup> The court denied the request without prejudice, so PCFFA could still seek to intervene at a later date if a proposed settlement revealed that the government was not adequately representing PCFFA's interest.<sup>26</sup>

## **B. The Concurrence**

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<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at 1316.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 1317.

<sup>25</sup> *Wolfsen Land & Cattle Co.*, 695 F.3d at 1317.

<sup>26</sup> *Id.* at 1319.

The concurrence stated that the majority had distanced itself from existing precedent, which required a minimal showing of inadequate representation.<sup>27</sup> Under the majority’s holding, the concurrence argued there would be an unreasonably high burden for potential intervenors because the court conflated “legal interests” with “litigation goals.”<sup>28</sup> Further, the court created a new presumption that adequate representation exists if two parties share an ultimate objective—a presumption that can “only be overcome by a compelling showing of inadequate representation.”<sup>29</sup> The concurrence opined that this higher burden would have the potential negative impact of preventing deserving parties from intervening in cases in which the government is a party (since it is presumed to represent its citizens).<sup>30</sup> The concurrence offered that the motion should have been denied, instead, because the potential harm suffered by the intervenor was speculative and hypothetical.<sup>31</sup>

#### **IV. CONCLUSION**

If the concurring opinion is correct, this decision marks a departure from previous decisions by improperly requiring an elevated showing that a potential intervenor’s rights may be inadequately represented by an existing party.<sup>32</sup> The danger of preventing parties from intervening as of right on failure to show inadequate representation, which the concurrence stated should be a low burden, is that many worthy parties may never have their claims adjudicated.<sup>33</sup>

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<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at 1320-1321.

<sup>29</sup> *Id.* at 1319.

<sup>30</sup> *Id.* at 1320.

<sup>31</sup> *Wolfsen Land & Cattle Co.*, 695 F.3d at 1322.

<sup>32</sup> *Id.* at 1319.

<sup>33</sup> *Id.* at 1320.