

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

ROUND VALLEY INDIAN TRIBES, a
federally recognized Indian tribe,

Plaintiff,

v.

THE UNITED STATES OF AMERICA,

Defendant.

CIVIL CASE NO. 06-00900 SGB
Judge Susan G. Braden

ROUND VALLEY TRIBES' OPPOSITION TO MOTION TO INTERVENE

I. SUMMARY OF ARGUMENT

Plaintiff, Round Valley Indian Tribes (“Plaintiff”, the “Round Valley Tribe”, or the “Tribe”), opposes intervention by an individual, Cheryl L. Lohman, (“Proposed Intervenor”) because (1) the Proposed Intervenor does not assert any federal statute or interest in the property or transaction that provides for intervention, (2) the existing parties adequately represent any possible or theoretical interest Proposed Intervenor has in this action, (3) intervention would involve issues outside the Court’s subject matter jurisdiction, (4) the Proposed Intervenor lacks a common question of law or fact between the Proposed Intervenor’s claim or defense and this case, and (5) intervention will unduly delay and complicate the proceedings to the prejudice of the existing parties .

II. NATURE OF CASE

This action involves a claim by the Tribe against the United States of America (“Defendant” or the “United States”) seeking money damages for breaches of trust duties in regard to the management by Defendant of the trust funds of the Round Valley Tribe. The action

arises out of Defendant's breach of Constitutional, statutory, regulatory, and common law trust duties owed to the Round Valley Tribe.

The Proposed Intervenor is an enrolled member of the Round Valley Tribe. The Proposed Intervenor is concerned about the effect that this action or settlement between the Tribe and the United States would have upon individualized non-monetary assets. The Proposed Intervenor claims that an individual member of the Tribe has a proprietary interest in the Round Valley Tribe's land. The Proposed Intervenor's claims have no basis in fact or law.

A. Interest Claimed Is Not Sufficient.

Intervention is controlled by RCFC 24. Intervention may be premised either as a matter of right under Rule 24(a) or permissively under Rule 24(b). RCFC 24(a), (b) (2011). Under intervention of right in Rule 24(a), the Proposed Intervenor must show either: (1) that a federal statute specifically grants an unconditional right to intervene, or (2) that it has such a sufficient interest in the property or transaction in dispute that unless it is allowed to intervene its ability to protect that interest will be impaired. RCFC 24(a) (2011). The Proposed Intervenor must demonstrate the existence of each of the two elements of RCFC 24(a), to prevail on a motion to intervene as of right. *Freeman v. U.S.*, 50 Fed. Cl. 305, 308-309 (2001). Here, the Proposed Intervenor has not identified any federal statute which provides for intervention as of right. Both Rule 24(a)(1) and Rule 24(b)(1)(A) require that a federal statute provide the Proposed Intervenor with a right to intervene. Thus it follows that if the Proposed Intervenor fails under Rule 24(a)(1), it would also fail under Rule 24(b)(1)(A). In addition, the Proposed Intervenor must establish an interest in either the property or a transaction in dispute. The Proposed Intervenor has failed to establish such an interest.

While there is no bright line-test to define what types of interests satisfy the interest requirement of RCFC 24(a), the Court relies upon principles established by the Federal Circuit to

determine when an interest relates to the property or transaction that is the subject of the principal case. *Osage Tribe of Indians v. U.S.*, 85 Fed. Cl. 162, 168 (2008). The interest itself must be one that is legally protectable in the sense that “substantive law recognizes [it] as belonging to or being owned by the applicant [proposed intervenor].” *Id.* at 169 (citing *Am. Mar. Transp. Inc. v. U.S.*, 870 F.2d 1559, 1562 (Fed. Cir. 1989)). The purported right of an individual Tribal member to the non-monetary assets or land of the Round Valley Tribe are not sufficient to support intervention in this action. The Proposed Intervenor admits that it has no individual claim to tribal trust funds, but claims that it does have an individual proprietary claim to the Tribe’s non-monetary assets and land. Motion, 5. It is settled precedent that individual Indians have no legally recognized interest in the property of a Tribe, which includes a Tribe’s land or resources. *Choate v. Trapp*, 224 U.S. 665, 671 (1912) (holding that an individual Indian had no title or enforceable right in tribal property). Thus, the Proposed Intervenor has failed to establish a federal statute which grants it an unconditional or conditional right to intervene and has failed to properly identify an interest or property right that is the subject of the principal case.

B. Adequacy of Representation by Existing Parties.

The Court’s examination of the intervention of right includes an analysis of the adequacy of representation by the existing parties to the present case. The Proposed Intervenor must establish that “their interest is inadequately represented by the existing parties.” *Freeman*, 50 Fed. Cl. at 309. The Proposed Intervenor has alleged that Round Valley Tribal Council officials have engaged in conduct that has prohibited the receipt and review of information “relevant to any proposed settlement and resolutions of the claims.” Motion, 1. This intra-tribal dissatisfaction claim, asserted here by the Proposed Intervenor, is similar to that alleged by proposed intervenors in the *Osage Tribe of Indians*. *Osage Tribe of Indians*, 85 Fed. Cl. at 175. In *Osage Tribe of Indians*, individual Osage Tribal members alleged that the Osage Nation was

not adequately representing their interests because they had “not been advised of the Tribe’s decisions or actions in the ...case.” *Id.* Without presenting specific evidence that demonstrated the Osage Nation’s abuse, incompetence, or lack of diligence in litigating the claims, the Court held that the individuals’ allegations lacked merit and were nothing more than expressions of dissatisfaction with elected leadership. *Id.* The Court acknowledged that such an intra-tribal dissatisfaction claim was best pursued in an “internal tribal mechanism” as opposed to intervention in the action at issue in *Osage Tribe of Indians*. *Id.* The same pattern is evident in this case as it is clearly stated by the Proposed Intervenor that they are dissatisfied with the elected leadership of the Round Valley Tribe. Motion, 2-3. The Proposed Intervenor presents no evidence that the Round Valley Tribe has been abusive, incompetent, or lacked diligence in litigating the Tribe’s claims. Thus, it is wholly appropriate for this court to presume that the Round Valley Tribe, “with sovereignty over its members analogous to the sovereignty of the United States over its citizens, is competent to litigate claims on behalf of and in the interest of its members.” *Id.*

C. Lack of Subject Matter Jurisdiction.

In reviewing the Motion to Intervene, the Court must determine if it has the independent subject matter jurisdiction to hear the Proposed Intervenor’s claims and defenses. *United Keetoowah Band v. U.S.*, 78 Fed. Cl. 303, 306 (2007). The party seeking intervention must have an interest in the case that “would be vindicable in its own right under the Court’s existing jurisdiction.” *Brookner v. U.S.*, 27 Fed. Cl. 423, 424 (1992). As identified above, an individual has no interest in the land, property, or resources of an Indian tribe. *Choate v. Trapp*, 224 U.S. 665, 671 (1912). The Proposed Intervenor is a singly individual who claims to have a proprietary interest in the non-monetary assets and land of the Round Valley Tribe, a claim which is in direct opposition to legal precedent. Since the Proposed Intervenor has no interest in

the non-monetary assets and land of the Round Valley Tribe, there is no subject matter jurisdiction to entertain the Proposed Intervenor's claims and defenses. Further, the intra-tribal nature of the Proposed Intervenor's allegations make it likely that the Court of Claims would have to review and rule upon internal tribal matters "that lie outside the scope of this court's authority." *Osage Tribe of Indians*, 85 Fed. Cl. at 173.

D. There Are Insufficient Common Questions to Justify Intervention

RCFC 24(b)(1)(B) allows a party to intervene in an action when a proposed intervenor's claim or defense and the main action share common questions of law or fact. RCFC 24(b)(1)(B) (2011). The Rule fixes no exact quantum of commonality that must be satisfied before intervention may be allowed. The matter is committed to the sound discretion of the court. *See* James W. Moore, *6 Moore's Federal Practice*, § 24.11 (Matthew Bender, 3d ed., 2004).

In this case, there is little or no commonality. The Proposed Intervenor has no individual interest in the outcome of the Tribe's action. The Motion to Intervene frankly admits as much by conceding that the Proposed Intervenor and other individual Tribal members "do not have a claim to tribal trust fund accounts." Motion, 5. The same holds true for any interest asserted by the Proposed Intervenor to any of the Tribe's non-monetary assets or land. There is, therefore, no commonality of issues either legal or factual in whatever positions the Proposed Intervenor may choose to assert.

E. Intervention Will Unduly Delay and Complicate Proceedings

This case was filed by the Round Valley Tribe on December 27, 2006. Considerable discovery has been conducted on the issues raised by the Plaintiff, a dispositive motion was filed and argued in San Francisco, and the Tribal Council participated in multiple days of settlement discussions with the United States. These discussions ultimately lead to a settlement that has been voted upon and approved by the Tribal Council. At this late stage, Proposed Intervenor

desires to inject purely intra-tribal concerns into what is already a complex legal case with complicated factual, accounting and discovery issues. Adding intra-tribal concerns about the ultimate disposition of this case, which involves the Round Valley Tribe's claims and assets (not the Proposed Intervenor's individual claims or assets), will in no way aid this Court or the parties in a resolution of this action. On the contrary, intervention could only delay the pending settlement and the long sought after resolution of the issues already before the Court. In exercising the discretion granted to it under RCFC 24(a) and 24(b), the Court may and should consider these factors.

Prejudice to the existing Parties should be examined in the light of nearly five-years of litigation involving the current parties and the long delay by the Proposed Intervenor in applying for intervention. Intervention was sought only as the matter was otherwise being brought to a conclusion. In *Cheyenne Arapaho Tribes v. U.S.*, 1 Cl. Ct. 293, 296 (1983), it was found that a six-year delay in seeking intervention was a significant factor in denying intervention as untimely. Allowing intervention now, will significantly prejudice the Tribe's determination of what is in the best interests of the Tribe and could potentially result in not only delay but the outright loss of the carefully negotiated resolution at hand.

III. CONCLUSION

For all of the reasons stated above, the Round Valley Tribe respectfully requests that the motion to intervene be denied.

DATED this 11th day of October, 2011.

s/Scott B. Henrie, WSBA #12673

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CERTIFICATE OF SERVICE

I hereby certify that on October 11, 2011, I electronically transmitted the attached document to the Clerk of U.S. Court of Federal Claims using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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