

FILED  
U.S. DISTRICT COURT  
DISTRICT OF WYOMING

MAR 01 2012

Stephan Harris, Clerk  
Cheyenne

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

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ENCANA OIL & GAS (USA) INC.,  
a Delaware corporation,

Plaintiff,

v.

JOHN ST. CLAIR,  
an Individual and Chief Judge of the  
Shoshone and Arapaho Tribal Court,

Defendant.

Case No. 12-CV-27-J

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**ORDER GRANTING MOTION TO INTERVENE**

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This matter came before the Court by *Estate of Jeremy Jorgenson's Motion to Intervene* (Doc. 34). Plaintiff, Encana Oil & Gas, Inc. ("Encana"), timely responded with *Encana's Opposition to the Estate of Jeremy Jorgenson's Motion to Intervene* (Doc. 40), while the Estate of Jeremy Jorgenson ("the Estate") promptly replied. The Estate notes that it has conferred with counsel for Defendant, Chief Judge St. Clair, who does not oppose the intervention.

This Court, having carefully considered the arguments, the pleadings of record and the applicable law, and being fully advised, finds as follows:

The Estate argues that it is entitled to intervene as of right pursuant to Fed. R. Civ. P. 24(a)(2), or in the alternative, to intervene permissively under Fed. R. Civ. P. 24(b)(1)(B). This Court finds that the Estate has satisfied its burden to intervene as of right under Fed. R. Civ. P. 24(a)(2), which directs that

[o]n timely motion, the court must permit anyone to intervene who . . . claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

The Estate's motion to intervene is timely inasmuch as Encana's *Motion for Preliminary Injunction* (Doc. 12)—initiating the dispute in which the Estate here seeks to be heard—was filed just over two weeks ago, with Judge St. Clair's response filed just a few days ago. That the Estate claims an interest relating to the property or transaction the subject of this action is also apparent because the underlying controversy in this matter is a wrongful death suit brought by the Estate, here derivatively addressed pursuant to Encana's claim that federal court (and not the Shoshone and Arapaho Tribal Court, where the case was filed) has jurisdiction of the matter.

Encana contends that intervention is unwarranted because the Estate has not shown its interest to be "direct, substantial, and legally protectable," the reasoning given by the Tenth Circuit in denying intervention as of right in *City of Stilwell, Oklahoma v. Ozarks Rural Elec. Co-op. Corp.*, 79 F.3d 1038, 1042 (10th Cir. 1996). However, in that case, an electric generation and transmission cooperative was attempting to intervene in a suit brought by a municipality against one of the companies the electric cooperative was supplying with power. *Id.* at 1041-42.

The cooperative argued that the condemnation of its buyer's territory would lead to increased costs for its remaining consumers, giving it a protectable property interest in the litigation. *Id.* at 1042. While the court found this interest too "contingent" and "too attenuated [to] satisfy the 'direct and substantial' requirement of Rule 24(a)(2)," *id.*, this has little bearing on the instant case, in which the Estate seeks to intervene in an action that will decide the forum in which its lawsuit will be heard. The same level of contingency and attenuation are simply not present.

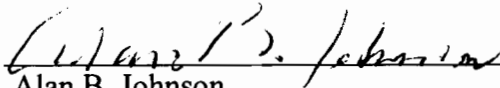
Moving to the third of the above criteria for intervention as of right, the determination of this action could certainly impair the Estate's ability to protect its interest in that the Estate specifically seeks its day in Tribal Court, the possibility of which may hinge on this Court's decision. As the Estate points out, if jurisdictional bases are proper, it has a right to bring its claims in Tribal Court, as granted by tribal law and protected by federal law. The Estate thus deserves the opportunity to appear in federal court to advocate for this.

Finally, the existing parties do not adequately represent the Estate's interests. Clearly, Encana's interests are directly adverse to the Estate's, while Chief Judge St. Clair, as an officer of the Shoshone and Arapaho Tribal Court, is not in a position to advocate for a litigant who seeks to be heard in his court. As the Estate aptly notes, when a would-be intervenor's concern is not necessarily a matter of sovereign interest, there can be no presumption that the government will adequately represent it. *Mille Lacs Band of Chippewa Indians v. State of Minn.*, 989 F.2d 994, 1001 (8th Cir. 1993). Moreover, a "proposed intervenor[] need only carry a minimal burden of showing inadequate representation." *Id.*

Accordingly, it is hereby ORDERED that *Estate of Jeremy Jorgenson's Motion to Intervene* (Doc. 34) shall be and the same is GRANTED.

It is further ORDERED that the Estate shall be allowed to APPEAR and PARTICIPATE at the PRELIMINARY INJUNCTION HEARING on March 2, 2012.

Dated this 29<sup>th</sup> day of February, 2012.

  
Alan B. Johnson  
United States District Judge